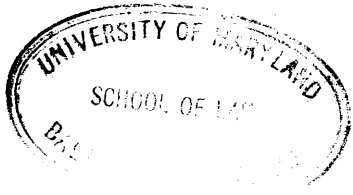
U. S. Commission on Civil Rights.

REPORT

of the

UNITED STATES
COMMISSION ON CIVIL RIGHTS

1959



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REV. THEODORE M. HESBURGH, C.S.C.
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STAFF DIRECTOR, GORDON M. TIFFANY

*Succeeding J. Ernest Wilkins (*Deceased*).

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REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS, 1959

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THE UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C.

SEPTEMBER 9, 1959.

To: THE PRESIDENT OF THE UNITED STATES
THE CONGRESS

The Commission on Civil Rights submits to you its report pursuant to Public Law 85–315, Eighty-fifth Congress.

We believe that this report, along with the separately printed record of hearings held by the Commission, will provide information of permanent value to the executive and legislative branches of the Government. This work could not have been done without the wholehearted cooperation of many individuals, organizations, and Government agencies. The assistance of a faithful and dedicated staff also was invaluable.

Respectfully yours,

JOHN A. HANNAH, *Chairman.*
ROBERT G. STOREY, *Vice Chairman.*
JOHN S. BATTLE.
DOYLE E. CARLTON.
REV. THEODORE M. HESBURGH, C.S.C.
GEORGE M. JOHNSON.

GORDON M. TIFFANY, *Staff Director.*

Acknowledgments

The Commission wishes to express to Dwight D. Eisenhower, President of the United States, its appreciation of his unfailing personal support and of his efforts in securing for the Commission the necessary cooperation of the many government departments and agencies that aided in the performance of its task.

Acknowledgment is also made to former President Harry S. Truman and to the staff of the Truman Library in Independence, Mo., for their courtesy and diligence in making available the working papers of the President's Committee on Civil Rights (1947).

Generous assistance was given the Commission by many Governors, Attorneys General, Mayors, and other State and local officials who were consulted in accordance with Section 105(c) of the Civil Rights Act of 1957, authorizing such consultation.

The Commission's thanks are also due to many official State and local organizations operating in the fields of civil rights, human relations, and fair employment practices; to numerous private organizations concerned with these endeavors; and to many religious and welfare groups, universities, statistical and research organizations, members of the press and other communications media. All gave full cooperation when requested.

The Commission feels a particular debt of gratitude to the hundreds of men and women who served on its State Advisory Committees and aided in its hearings and conferences, thus providing information of great value to this report.

Finally, the Commission wishes to acknowledge that this report could not have been made without the able and devoted assistance of Gordon M. Tiffany, Staff Director, other members of its staff, and consultants who have furnished part-time assistance and advice. All who have served on the Commission staff or as consultants at one time or other are listed below in alphabetical order.

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INTRODUCTION

THE COMMISSION ON CIVIL RIGHTS

ITS ASSIGNMENT AND OPERATIONS

In 1957, the Congress of the United States was disturbed by allegations that some American citizens were being denied the right to vote, or otherwise deprived of the equal protection of the laws, because of their race, color, creed, or national origin.

In Congressional committee hearings and later in floor debate, there were wide differences of opinion about the truth of these reports. From these differences arose strong bipartisan agreement that an objective, bipartisan commission should be created to conduct a comprehensive investigation.

In presenting President Eisenhower's request for a "full scale public study," Attorney General Herbert Brownell, Jr. declared that it should be objective and free from partisanship, broad and at the same time thorough. The Attorney General further testified that such a study, fairly conducted, "will tend to unite responsible people . . . in common effort to solve these problems." He continued:

> Investigation and hearings will bring into sharper focus the area of responsibility of the Federal Government and of the States under our constitutional system. Through greater public understanding, therefore, the Commission may chart a course of progress to guide us in the years ahead.[1]

The House Judiciary Committee reported that the need for a commission was "to be found in the very nature of the problem involved; the complexity of the subject matter demands greater knowledge and understanding of every facet of the problem." [2]

In the Senate, Majority Leader Lyndon Johnson observed that the proposed commission "can be a useful instrument. It can gather facts instead of charges; it can sift out the truth from the fancies; and it can return with recommendations which will be of assistance to reasonable men." [3]

On September 9, 1957, in the first civil rights bill since 1875, Congress provided for the establishment of such a commission as an independent agency within the executive branch.

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[1] Letter to the Vice President and the Speaker of the House of Representatives, April 6, 1956; reiterated before the House Judiciary Committee. See 85th Cong., H. Rep. 291, Apr. 1, 1957, p. 14.

[2] 85th Cong., H. Rep. 291, Apr. 1, 1957, p. 8.

[3] Congressional Record, Aug. 7, 1957, p. 12637 (daily edition).

It was to be a Commission *on* Civil Rights, empowered only to investigate, to study, to appraise, and to make findings and recommendations. It was *not* to be a Commission for the enforcement of civil rights. It would have no connection with the Department of Justice and no enforcing powers other than to issue subpoenas and seek court enforcement thereof in connection with its factfinding investigations.

Specifically, the Civil Rights Act of 1957 directed the Commission to—

> (1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin, which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;
>
> (2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and
>
> (3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.[4]

The Commission was instructed to submit to the President and Congress a comprehensive report of its activities, findings, and recommendations not later than two years from the enactment of the Act.

APPOINTMENT AND CONFIRMATION OF MEMBERS AND STAFF DIRECTOR

For reasons beyond its control, the Commission was unable to begin full-scale operations during the first eight months of the two-year study period in the Act.

On November 7, 1957, the President nominated the following members: Stanley Reed, retired Supreme Court Justice (chairman); John Hannah, President of Michigan State University; John S. Battle, former Governor of Virginia; the Rev. Theodore M. Hesburgh, President of the University of Notre Dame; Robert G. Storey, Dean of the Southern Methodist University Law School; Assistant Secretary of Labor J. Ernest Wilkins.

On December 2, 1957, Mr. Justice Reed resigned. The President nominated Dr. Hannah to be Chairman, and Doyle E. Carlton, former Governor of Florida, to be the sixth member. The President also endorsed the Commission's choice of Dean Storey to be Vice Chairman. Hearings on these nominations were held February 24, 1958, by the Senate Judiciary Committee. The Senate confirmed the nom-

[4] Sec. 104(a) (1)–(3) of the Civil Rights Act of 1957, Public Law 85–315, 85th Cong., Sept. 9, 1957.

inations on March 4, 1958. The President's nominee for Staff Director was Gordon M. Tiffany, former Attorney General of New Hampshire, whose nomination was sent to the Senate on February 18, 1958. Hearings were held by the Subcommittee on Constitutional Rights of the Senate Judiciary Committee on April 2, and not until May 14 did the Senate confirm the nomination. Only then could the Commission and its Staff Director proceed with the authority provided in the Act. Thus only 16 months remained to conduct and report the investigations, studies, and appraisals prescribed by Congress.

ORGANIZATION OF STAFF

The nucleus of a staff had been assembled pending the confirmation of the Staff Director. An Executive Secretary, Mrs. Carol Arth, was loaned by the State Department to take charge of office personnel and public liaison. The Commission had decided early that each Commissioner could recommend one lawyer for appointment as his legal assistant, who would also serve on the regular staff of the Commission under the Staff Director. Three of these lawyers were available to study the legislative history of the Act and contribute to the initial planning.

George M. Johnson resigned as Dean of the Howard University Law School to join the staff as Director of Planning and Research. A. H. Rosenfeld, an attorney and former Army colonel, became Chief of the Complaints and Field Survey Division. Francis P. Brassor, a veteran civil servant who had been Executive Director of both Hoover Commissions, served as Consultant on Organization during the initial period.

On July 1, 1958, the Commission delegated to the Staff Director authority in all matters of staff organization. Subsequently three main offices were established within the Commission: a Secretariat and Liaison Office supervised by Mrs. Arth; an Office of Complaints, Information, and Survey headed by Col. Rosenfeld, and an Office of Laws, Plans, and Research directed by Dean Johnson.

STATE ADVISORY COMMITTEES

One of the early decisions of the Commission was to organize a State Advisory Committee of five to nine members within every State and Territory, as authorized by Section 105(c) of the Act.

Serving without pay, the committees were invited to study whatever civil rights problems seemed to them important within their areas and to report their findings and recommendations to the Commission.

To organize the advisory committees and to coordinate their work, the Commission obtained the consulting service of Frank Bane, former Secretary of the Council of State Governments, and Henry M. Shine,

Jr., a Dallas, Texas, attorney who had served as assistant to Dean Storey on the Hoover Commission. Later Mr. Shine became Assistant Staff Director in charge of the State Advisory Committees Section of the staff.

In order to maintain direct contact between the Commissioners and the State committees, each Commissioner was assigned eight states for his general supervision. The States assigned to any single Commissioner were not within any single region. Rather, to familiarize the Commissioners with the different regional aspects of their problem, each was assigned States in the North, South, West, and East. The legal assistants to the Commissioners prepared handbooks including the laws, cases and factual background of each State for use by the Commissioners, the staff, and the State Advisory Committees. As an alternative to expensive field offices and a large investigating staff, the Commission subscribed to newspapers in every State. Thus, the staff kept abreast of civil rights news in every State at small expense.

Among the first advisory committees organized were those in Texas, Indiana, Virginia, Michigan, and Florida, home States of five of the Commissioners. By August 1959, there were committees in all of the 50 States except Mississippi and South Carolina.

LIBRARY OF CONGRESS REPORTS

Another early decision of the Commission was to ask the Legislative Reference Section of the Library of Congress to assemble some of the voluminous legal materials necessary for the Commission's studies, including Federal and State constitutional provisions and statutes involving civil rights, and the interpretations of these laws by courts and administrative bodies.

The first of these compilations was delivered to the Commission late in August, 1958. They were sent to the members of the staff studying assigned geographical areas and to the respective State Advisory Committees. Eventually there were some 8,000 pages of legal compilations, believed to comprise the most comprehensive collection of legal information on civil rights ever assembled. Copies will be deposited in the Library of Congress and State libraries.

SCOPE OF COMMISSION STUDIES

As noted earlier, Congress specified that the Commission must investigate alleged denials of the right to vote by reason of color, race, religion, or national origin. Under its further mandate to study, collect information on, and appraise legal developments and Federal laws and policies affecting the equal protection of the laws, the Commission clearly lacked time to study all fields so affected. After

considering public education, housing, administration of justice, employment, public accommodations, government facilities, and transportation, the Commission decided for reasons made clear in this report to concentrate on public education, housing and voting. However, to the extent that it had time, the Legislative Reference Service of the Library of Congress included within the scope of its compilations all eight fields, and State Advisory Committees were invited to select any of these or other subjects that seemed urgent in their States.

Three staff study-teams of attorneys and political scientists, working in the Commission's Office of Laws, Plans, and Research, were assigned to the areas of education, housing and voting. The voting team necessarily worked closely with the Office of Complaints, Information, and Survey, which received voting complaints and conducted preliminary surveys. All three study groups prepared detailed questionnaires, which were sent to each State Advisory Committee requesting information on the situation in each State. All three groups conducted field inquiries and surveys, with the cooperation of the Office of Complaints, Information, and Survey.

VOTING INVESTIGATIONS

Beginning with a modest staff, the Commission was careful to expand only as circumstances required. No sworn voting complaint was received until August 14, 1958. Within a few days the Commission authorized a field investigation and promptly and unanimously ordered such investigations of the other voting complaints that came in during succeeding months. Eventually, field investigations were made in Florida, Alabama, Mississippi, Louisiana, and Tennessee.

HEARINGS AND CONFERENCES

The Commission's first public hearing was held in Montgomery, Alabama, December 8 and 9, 1958, in connection with the investigation of voting complaints from several Alabama counties. A public hearing on Louisiana voting complaints, scheduled to be held in Shreveport on July 13, 1959, was postponed at the last moment when the State's Attorney General obtained a restraining order from a Federal district judge. Other hearings and conferences were held on housing and education. On March 5 and 6, 1959, by Commission invitation, officials of school systems that had undergone partial or complete desegregation convened in Nashville, Tenn., to compare their thoughts and experiences. During 1959, the Commission held housing hearings in New York City (Feb. 2 and 3), Atlanta (April 10), and Chicago (May 5 and 6), and it met in Washington, D.C., on June 10 with the heads of Federal housing agencies.

The transcripts of the above hearings have been printed separately as supplements to this report and may be obtained on application to the Commission on Civil Rights, Washington 25, D.C.

On June 9 and 10, 1959, the Commission held a conference in Washington, D.C., with a group that included the chairman and one other representative of each State Advisory Committee.

COOPERATION OF FEDERAL AGENCIES

Pursuant to the provision of Section 105(e) of the Act that "all Federal agencies shall cooperate fully with the Commission," the Staff Director—with full White House backing—submitted to a number of Federal departments and agencies questionnaires dealing with matters of voting rights and equal protection within the scope of the respective departments and agencies. Staff members also consulted frequently with Federal officials. Much of the resulting information has been incorporated in this report.

MEETINGS AND MEMBERSHIP

Following its first meeting on January 3, 1958, the Commissioners met on an average of once a month. On January 19, 1959, J. Ernest Wilkins died, a great loss to the Commission and to the country. On April 21, 1959, the President nominated Dean George M. Johnson, Director of the staff Office of Laws, Plans, and Research, to replace Mr. Wilkins as a member of the Commission. The Senate confirmed Dean Johnson's nomination on June 4, 1959. Rufus Kuykendall, Indianapolis attorney, member of the Commission's Indiana Advisory Committee, and former member of the U.S. National Commission for UNESCO, replaced Dean Johnson as Director of the Office of Laws, Plans, and Research.

AGREEMENTS AND DISSENTS

In asking men of different backgrounds and of different regions of the country to serve on the Commission, the President could not have expected unanimity on some of the nation's difficult problems of civil rights. Very substantial agreement has been reached on most of the fundamental facts and problems. The disagreement is about how best to remedy the denials of the right to vote and of the equal protection of the laws under the Constitution, which the Commission has found to exist.

The differences are not surprising. Problems of racial injustice have existed in varying forms since the birth of the nation, and for nearly a century the Constitution has explicitly guaranteed the equal protection of the laws to all persons, and provided that the right to vote shall not be denied because of race or color. But no way has yet

been found, although many measures have been tried, to protect and secure these rights for all Americans. The Civil War and Reconstruction did not accomplish the task, nor was it achieved in the atmosphere of indifference that followed. Litigation has not sufficed, nor has the Civil Rights Act of 1957.

So it is still necessary for men to reason together about these questions and to continue the search for answers. This the Commission has tried to do. Because reasonable men differ on the best remedial measures, it was agreed that the Commissioners should express these disagreements wherever deemed important, either in footnotes or in supplementary statements.

The "Recommendations" which conclude the sections on Voting, Education, and Housing in this report were made by unanimous or majority Commission action. These are followed by "Proposals," which are recommendations made by fewer than a majority of the Commission, and these in turn are followed by "Separate Statements" or "Supplementary Statements" of disagreement, of explanation, or of additional views, signed by one or more Commissioners. It was further agreed that each Commissioner would be free to express dissent or additional proposals by means of footnotes throughout the report, and that individual "General Statements" would appear at the end of the report.

PART ONE. CONSTITUTIONAL BACKGROUND OF CIVIL RIGHTS

CHAPTER I. THE SPIRIT OF OUR LAWS

I confess that in America I saw more than America; I sought there the image of democracy itself * * *.—ALEXIS DE TOCQUEVILLE.[1]

The first question before the United States Commission on Civil Rights is: What are civil rights in the United States?

They are, by definition, the rights of citizens, though under the Constitution many of them extend to all persons.[2] A study of civil rights should center around the question: What does it mean to be a citizen of the United States?

In the assignment of this Commission, Congress indicated that its first concern is with the right of citizens to vote and the right of all persons to equal protection of the laws. These rights are the very foundation of this Republic. They did not arise suddenly in current civil rights controversies or in the so-called Civil Rights Amendments added to the Constitution after the Civil War or even in the Bill of Rights of 1791. They are implied in the original Constitution itself, in its very first words and in its provisions for representative government and the rule of law.* Therefore, the Commission, in order to

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*EXCEPTION TO THE STATEMENT OF THE CONSTITUTIONAL BACKGROUND OF CIVIL RIGHTS

BY VICE CHAIRMAN STOREY AND COMMISSIONERS BATTLE AND CARLTON

We take exception to this and all succeeding passages to the effect that a provision on the equal protection of the laws properly may be implied in the original Constitution itself. Such assertions ignore historical fact and disregard the development of constitutional law pertinent to recognition of the human dignity of the individual in our democratic society.

1. The Declaration of Independence explicitly stated the principle "that all men are created equal" in justification for the revolutionary overthrow of the existing general government of the American Colonies.

2. The first document of the new general government as independence was achieved was the Articles of Confederation of March 1, 1781. In the sole reference to legal recognition of individual rights in this document, the fact of inequality of man was acknowledged: ". . . the *free* inhabitants of each of these States, *paupers, vagabonds, and fugitives from Justice excepted*, shall be

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[1] Alexis de Tocqueville, *Democracy in America*, 1835 (Knopf 1945), Introduction, p. 14.

[2] Many constitutional rights, such as those in the Fifth and Fourteenth Amendments, may be claimed by aliens and others as well as by citizens.

understand the fundamental principles involved in securing these rights, had to review more than the opinions of the Supreme Court. The best commentary on the Constitution is the whole history of the Republic.

Continuation of EXCEPTION BY VICE CHAIRMAN AND COMMISSIONERS BATTLE AND CARLTON

entitled to all privileges and immunities of free citizenship in the several States. . . ." [Emphasis supplied.]

3. At the time the Constitution was drafted, the discussion of development of the suffrage which appears elsewhere in this report, and the compromise on slavery demonstrated that the principle of equality was not made part of our fundamental law.

4. There is no provision requiring "equal protection of the laws" anywhere in the original Constitution, nor in the first 10 amendments, which safeguard certain rights of the individual against encroachment by the Federal Government alone.

5. A proposed amendment which used the word "equal" was refused by the Senate and never submitted for ratification by the States. It read: "The equal rights of conscience, the freedom of speech or of the press, and the right of trial by jury in criminal cases, shall not be infringed by any State" (The Constitution of the United States of America, S. Doc. No. 170, 82d Cong., 2d sess., p. 750).

6. "Equal protection of the law" became part of our fundamental law in 1868 upon ratification of the Fourteenth Amendment. It is a limitation upon State action and, also unlike the rights guaranteed by the first 10 amendments, "the Congress shall have power to enforce, by appropriate legislation, the provisions of this article." We are prompted to make this exception out of concern that the object lesson to be gained from study of an accurate account not go unnoticed in a text which, in our opinion, so overemphasizes the statement of the principle of equality that actual practice is submerged.

Parallel patterns teaching the same object lesson are noted: The development of the suffrage in America, discussed elsewhere in this report; the fact that 82 years elapsed between enactment of the last civil rights legislation and the act of 1957 by which this Commission was created. The object lesson is this: Declaration of the principle of the equality of all men under law was revolutionary, but its realization in practice and experience has been evolutionary.

7. Finally, an explanation of the terms "civil liberties" and "civil rights" may be helpful. While we recognize these expressions—"civil rights" and "civil liberties"—are used interchangeably, there are historical and legal differences.

"Civil liberties" are those rights derived from the U.S. Constitution which may be asserted by citizens against both the State and Federal Governments. These include freedom of religion, press, speech, and assembly which are set out in the First Amendment and a part of the Bill of Rights. They are wholly free of Government action.

After the adoption of the Fourteenth Amendment in 1868, the other individual rights, protected against State action with supplementary enforcement powers granted to the Federal Government, are "civil rights." The right of the ballot is the best illustration.

The Declaration of 1776 recognized as the first principle of our independence that all men are created equal.

For our Founding Fathers the principles of the Declaration were established by "the Laws of Nature and of Nature's God." That all men are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed—these "truths" were, in Jefferson's earlier draft, declared to be "sacred and undeniable." Benjamin Franklin amended the draft to read simply, "We hold these truths to be self-evident."

Insofar as was deemed practicable, the Constitution embodied these truths in the first principle of our self-government, that We the People rule.[3] But to achieve the more perfect union of 1787 the framers of the Constitution found it necessary to accept human slavery. For purposes of apportioning representation in Congress a slave was considered three-fifths of a person, and Congress was not to have the power to prohibit the importation of slaves until 1808. This contradiction between the sacred and self-evident truths of 1776 and the compromise of 1787 so shocked Virginia's delegate George Mason that he refused to sign the Constitution and, with Patrick Henry, led the fight in Virginia against its ratification.

The gap between the great American promise of equal opportunity and equal justice under law and its at times startlingly inadequate fulfillment in practice has thus been a major—and probably a creative—factor in American history from the beginning of the Nation. The conflict between those who would extend the republican principle to all men and those who would limit it to some men or who would delay its application has produced a tension in the minds and hearts of Americans and in American laws that is with us still.

The grand design of the Constitution was to provide machinery through which such conflicts could be resolved by reflection and choice, with the consent of the governed.[4] Because Madison, an opponent of slavery, decided that the Constitution provided adequate machin-

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[3] As Chief Justice Marshall said for the Court in McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), after noting that the Constitution "was submitted to the people" for ratification, "The government proceeds directly from the people; is 'ordained and established' in the name of the people * * * (and) is, emphatically, and truly, a government of the people." See also Corwin, *Constitution of the United States of America,* Sen. Doc. No. 170, 82d Congress, 2d Sess. (1952), p. 59.

[4] To the New York advocate of the "rich and the well born" as much as to Virginia's democrats the Constitution meant self-government. In *The Federalist* No. 1 Alexander Hamilton said that "it seems to have been reserved to the people of this country by their conduct and example to decide the important question whether societies of men are really capable or not of establishing good government from reflection and choice or whether they are forever destined to depend for their political constitutions on accident and force."

ery to do this, he became one of its foremost champions in writing many of *The Federalist* papers. He urged the people of Virginia and other States to ratify the Constitution and then seek to perfect it through constitutional amendment.

Many Americans, including Jefferson and Mason, were unhappy that no specific bill of rights had been included in the Constitution. But the framers were aware that 8 of the 13 States had already adopted bills of rights and that all of them had a republican form of government.[5] Because the Federal Government was itself to be republican in form and limited in its powers and because its constituent parts were assumed to be republican, the majority of framers saw no necessity for an additional Federal bill of rights.[6]

This assumption of the republican nature of State constitutions and of the equal justice provided by the common law was to a large extent justified. As James Bryce reminds us, the framers of the Constitution were fitting a keystone in an almost completed structure. The federating States were not only little republics in themselves, but inside most of them were free cities and townships already operating on democratic lines. These principles were embodied in the covenant on the *Mayflower* in 1620, in other social contracts of the early colonists, and in the New England town meetings that gave birth on this continent to the idea of universal suffrage. The historical roots of our civil rights go even deeper. The town system of local self-government, like most of our rights and liberties, stems from the evolution of Anglo-Saxon common law and from early English revolutions. With the American Revolution, says De Tocqueville, "the doctrine of the sovereignty of the people came out of the townships and took possession of the state." [7]

Recognition of the right to equal protection of the laws or equal justice under law is at least as old as the right to vote. In *Magna Carta* the cities, boroughs, and towns were not only promised their

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[5] N. T. Dowling, *Cases on Constitutional Law*, 1950, pp. 48–49. The Virginia Bill of Rights, adopted 3 weeks before the Declaration of Independence affirmed "as the basis and foundation of government"—

"That elections of members to serve as representatives of the people in assembly, ought to be free; and that all men having sufficient evidence of permanent common interest with, and attachment to the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented for the public good."

[6] Hamilton wrote in *The Federalist* No. 84 that bills of rights, which originated as "stipulations between kings and their subjects", had "no application to the constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain everything, they have no need of particular reservations."

[7] De Tocqueville, *op. cit. supra* note 1, at 56, 31, 59. Bryce, *The American Commonwealth.*

liberties, but King John promised that "to none will we sell, deny, or delay right or justice." [8]

The assumption that State and local governments would secure and protect the civil rights of citizens of the United States, including the right to vote and the right to equal justice, is reflected in a number of provisions of the Constitution. When the Founding Fathers provided that the Federal House of Representatives "shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature," it was understood that each State had such an elected legislature and that, with certain property and other restrictions, the people were in each State the electors.[9]

To make sure that all States would follow the principle of government by the consent of the governed, the Founding Fathers provided that "The United States shall guarantee to every State in this Union a Republican Form of Government * * *." And as an additional safeguard they provided that—

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; *but the Congress may at any time by Law make or alter such Regulations* * * *.[10]

This is not to suggest that the right to vote has ever been unqualified or that the Constitution intended to make popular suffrage in free elections the only principle of our government. On the contrary, the President was to be selected indirectly by an electoral college, the Senate was selected by State Legislatures, and the members of the Supreme Court were not to be elected at all but appointed by the President. It was understood then as now that States could establish reasonable restrictions on the right to vote. But the people, so defined

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[8] While in reality Magna Carta was a treaty between feudal barons and royal power, at the hands of Sir Edward Coke and other common law lawyers this contract with the King became a symbol of popular sovereignty and of the idea of the natural right to equal justice. The symbol has been more important than the reality. The Constitution of the United States was written, says Plucknett, "by men who had Magna Carta and Coke Upon Littleton before their eyes." Plucknett, *A Concise History of the Common Law,* 4th Ed., pp. 22–25.

[9] Art. I, sec. 2. The same assumption of a representative State legislature was the basis for the selection of Senators. Art. I, sec. 3. The Seventeenth Amendment provided for the direct election of Senators "by the people" with the same qualifications for electors as those of the House of Representatives.

[10] Art. IV, sec. 4; art I, sec. 4. Emphasis added. While the Supreme Court has considered the guarantee to every State of a republican form of government a political question not subject to judicial enforcement, it is clear that if a State should violate the basic elective principle of republican government Congress could remedy this in part by making or altering the regulations for the elections of Senators and Representatives so as to protect the right of the people to vote.

and duly limited, do by the terms of the Constitution have a right to vote.[11]

Similarly, implicit in the concept of republican government and the rule of law is the principle of equal protection of the laws. Since this was embodied in the common law in effect in the States, and since even the King had been held to be subject to the common law, it was assumed to be secured in States that had just won their independence in the name of the principles championed by Lord Coke and John Locke.[12] Thus, the Founding Fathers were further establishing the civil right to equal justice when they provided in article IV, section 2, that: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Despite these constitutional provisions, the demand for an explicit bill of rights continued. Several States ratified only after General Washington suggested that the desired guarantees be added by amendment.[13] Strong southern pressure, led by Jefferson, resulted in the approval of the first 10 civil rights amendments by the First Congress and their prompt ratification in 1791.

Even with the Bill of Rights the gap between the words of the Declaration of Independence and the political realization remained very wide. The Bill of Rights was construed to limit only the actions of the Federal Government—not the governments of the States. Not only were Negroes excluded from the franchise in most States, but the machinery for registering the consent of the governed also excluded approximately half of those governed—all women. So established were these disqualifications by reason of race, color, or sex that an observer as sensitive as De Tocqueville could write in 1835 that "the principle of the sovereignty of the people has acquired in the United States all the practical development that the imagination can conceive." [14]

De Tocqueville's imagination here fell short of his own logic. After noting the extension of republican principles throughout the American body politic in the first half century of constitutional rule, largely

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[11] In the Dred Scott decision, Chief Justice Taney declared that: "The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty." 19 How. 393, 404 (1857).

[12] Dr. Bonham's Case, 8 Coke's Rep. 114a (1610); Case of Proclamations, 12 Coke's Rep. 74 (1610); Locke, *Of Civil Government,* Second Essay (1689). See James Otis, Argument Against Writs of Assistance (1761). The Fundamental Constitutions of Carolina (1669–1670) were actually drafted in England by Locke. Dowling, *Cases on Constitutional Law,* p. 36.

[13] Corwin, *op. cit. supra* note 3, at 750, 14.

[14] De Tocqueville, *op. cit. supra* note 1, at 57.

through State action in lowering or ending property qualifications for voting, De Tocqueville had concluded that "the further electoral rights are extended, the greater is the need for extending them; for after each concession the strength of the democracy increases, and its demands increase with its strength * * * and no stop can be made short of universal suffrage." [15]

However, there were many halts along the way. To the end of his life the author of the Declaration was deeply concerned about the distance between the nation's practice and its solemnly declared goal. Of the nation he loved and the slavery that he hated, Jefferson wrote: "And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just; that his justice cannot sleep forever." He was not satisfied with the scope of the Bill of Rights but approved it on the ground that "Half a loaf is better than no bread." [16]

The bread of full freedom, human dignity, universal suffrage and equality of opportunity has always been the American dream. It has stirred each generation of Americans to work for its fulfillment. Knowing of this dream, great waves of immigrants sailed to these shores, speaking foreign languages, following different customs, practicing different religions. Under the Constitution they became part of the American electorate, part of the sovereign people. Often in the face of discrimination, they advanced to first-class citizenship with the equal protection of the laws.

In this sense the Constitution and the laws of the land have played a large part in the making of Americans. The Founding Fathers believed that self-government would teach men how to be free. America, the world was told, is producing a new man. And these new men, with their civil rights under the Constitution, have in turn made America.

Only once has the American constitutional process failed, at least for a time. Human slavery proved too severe a test for the peaceful processes of persuasion. The Dred Scott decision, in which a divided Supreme Court said that Negroes were not "people of the United States" and could not claim or be granted the privileges and immunities of citizens of the United States, drew the lines of civil war.[17] On the one hand, slavery was so repugnant to the religious and political principles of many Americans that the abolitionists refused

[15] *Ibid.*
[16] *Thomas Jefferson on Democracy*, S. K. Padover, ed., Pelican Edition, pp. 99, 50.
[17] Dred Scott v. Sandford, 19 How. 393 (1857).

to obey the fugitive slave laws upholding it.[18] On the other hand, many people in the slave States chose to defend with force their States' rights to decide the matter without Federal interference.

Civil war shortcircuited any further attempt to resolve the issue by Congressional or Executive action or by constitutional amendment. Persuasion takes place through the ordeal of war, but with agony and bitterness. More Americans lost their lives in this conflict between Americans than in all of the Nation's other major wars put together, including World War I, World War II, and the Korean conflict.[19] The emancipation of the slaves and the occupation and reconstruction of the South created problems—problems of civil rights—that are still unsolved.

This Commission has reviewed the history of America and the spirit of its laws in order to trace, and try to illuminate, the fundamental constitutional principles involved in civil rights. Denial of those rights and principles necessarily involves the nation as a whole. For if the idea of government by consent is the essence of this Republic, then for the sake of the American experiment in self-government, and not just for the vindication of the claims of certain persons or groups, the right to vote and the equal protection of the laws must be secured and protected. Above all, it is the Republic that requires a free electorate—at least a Republic conceived in liberty and dedicated to the proposition that all men are created equal.

By returning to these fundamental principles of the Founding Fathers we can perhaps disentangle ourselves from much of the current disputation about recent decisions of the Supreme Court. Over the years the Court has given differing interpretations of the Constitution, and men may honestly differ about the wisdom of these interpretations. But the principles remain steadfast.

The authors and signers of the Declaration of Independence "intended to include *all* men," Lincoln reminds us. "They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity." But they did consider all men equal in their God-given and hence "unalienable" civil rights. They so declared, Lin-

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[18] See Ableman v. Booth, 21 How. 506 (1859), in which the State of Wisconsin resisted and declared invalid the Fugitive Slave Law. See also Prudence Crandall v. State of Connecticut, 10 Conn. Reports 339 (1834); Garrison, *Brief Sketch of the Trial of William Lloyd Garrison* (1834); Thoreau, *Essay on Civil Disobedience;* Parker Pillsbury, *Acts of the Anti-Slavery Apostles* (1883); H. C. Wolf, *On Freedom's Altar—The Martyr Complex in the Abolition Movement* (U. of Wisc. 1952).

[19] "In all the major American wars, beginning with the Revolution and coming on through the recent Korean conflict, excepting only the Civil War, some 606,000 Americans lost their lives from battle and non-battle causes. In the Civil War alone more than 618,000 American servicemen lost their lives". Bell Irvin Wiley, "The Memorable War," 53 Missouri Historical Review 99, 101 (1959).

coln urged, in order that enforcement "might follow as fast as circumstances should permit". He added:

> They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people of all colors everywhere.[20]

In a world where colored people constitute a majority of the human race, where many new free governments are being formed, where self-government is everywhere being tested, where the basic human dignity of the individual person is being denied by totalitarian systems, it is more than ever essential that American principles and historic purposes be understood. These standards—these ideas and ideals—are what America is all about.

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[20] Lincoln at Springfield, June 26, 1857. See *The Life and Writings of Abraham Lincoln* (Stern ed., Modern Library), pp. 422–3.

CHAPTER II. THE REQUIREMENTS OF THE CONSTITUTION

The Thirteenth, Fourteenth, and Fifteenth Amendments gave new definitions of what it means to be a citizen of the United States. The interpretation of these new constitutional requirements by the organ of the Federal Government established to interpret the laws of the land has necessarily provided the frame of reference for most post-Civil War problems of civil rights.

The Thirteenth Amendment abolished slavery; the Fourteenth Amendment made the freed Negroes citizens of the United States and of the States wherein they reside and promised them the equal protection of the laws; and the Fifteenth Amendment provided that the right to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

But this only meant that nearly 4 million human beings whose ancestors had been torn from their roots in Africa and brought to this country in chains, who had known nothing but slavery, who had almost no education or training for citizenship, suddenly were turned into the mainstream of American life as free men and women.[1]

The general unreadiness for this revolution has shaped our history. The gap in the standards of life between a majority of Negro Americans at the bottom of the economic and social ladder and a majority of more fortunate white Americans has not yet been closed. Nor has the reluctance of many white people to grant Negro Americans their full rights of citizenship been overcome.

In each of the postwar amendments Congress was empowered to enforce the provisions by appropriate legislation. In 1866, 1870, and 1875, civil rights bills were enacted. In some of these acts—for example, in provisions prohibiting racial discrimination in inns, public conveyances, and places of amusement—Congress undoubtedly assumed that it had plenary legislative power to enforce the rights established by the Fourteenth Amendment. However, in 1883, the Supreme Court held these sections of the Civil Rights Act of 1875 unconstitutional. Construing the amendment more narrowly than Congress did, the Court held that it prohibited only official State action, not individual private violation of civil rights, and that Congress could enact only corrective and remedial, not positive and general legislation.[2]

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[1] The number of U.S. Negroes rose from 757,208 in 1790 to 4,441,830 in 1860. At the last census enumeration before the Civil War the Negro slave population had grown to 3,953,760, while free Negroes numbered over 488,000. (*Statistical Abstract of the United States*, p. 22; also *Collier's Encyclopedia*, vol. 14, p. 416 C.)

[2] Civil Rights Cases, 109 U.S. 3 (1883) Cf. Strauder v. West Virginia, 100 U.S. 303 (1880).

The Court had already in 1873, in a case dealing not with Negroes at all but with a State's power to regulate business, construed the privileges and immunities clause of the Fourteenth Amendment to protect only those privileges and immunities that derived from the status of citizenship of the United States, not from that of State citizenship, and defined these national rights so narrowly that the protection of most civil rights was left to State action.[3] Thus the privileges and immunities clause was early divested of its constitutional vitality and has never once been applied to protect a civil right.

Finally, as the high water mark in this judicial restriction of the Fourteenth Amendment, the Court approved the doctrine of "separate but equal." It did so in upholding a Louisiana statute requiring separate facilities for white and colored persons on railroads in the State.[4] The Court's disapproval of the civil rights amendments and statutes is clearly indicated by Justice Brown's majority opinion. The object of the Fourteenth Amendment was "undoubtedly to enforce the absolute equality of the two races before the law," he conceded.[5] But he added:

> Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.[6]

None of these decisions were unanimous. In vigorous dissent Justice Harlan argued that:

> The substance and spirit of the recent amendments of the Constitution have been sacrificed by a subtle and ingenious verbal criticism. * * * Constitutional provisions, adopted in the interest of liberty and for the purpose of securing, through national legislation, if need be, rights inhering in a state of freedom, and belonging to American citizenship, have been so construed as to defeat the ends the people desired to accomplish, which they attempted to accomplish, and which they supposed they had accomplished by changes in their fundamental law.[7]

Harlan rejected the notion that the fifth section of the Fourteenth Amendment gives Congress the power to legislate only for the purpose of carrying into effect the prohibition on State action. The first clause of the amendment, he pointed out, is positive, creating and granting to Negroes citizenship in the United States and in the States wherein they reside. This grant of State citizenship, argued Harlan, secured at least exemption from race discrimination with respect to

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[3] Slaughter-House Cases, 16 Wall. 36, 83 U.S. 394 (1873).
[4] Plessy v. Ferguson, 163 U.S. 537 (1896).
[5] *Id.* at 544.
[6] *Id.* at 551–552.
[7] Civil Rights Cases, 109 U.S. 3, 26 (1883).

those rights enjoyed by white citizens in the same State.[8] Therefore the amendment confers upon Congress the power to legislate for the enforcement of all its sections.

Harlan's dissent in *Plessy v. Ferguson* is even more noteworthy since its reasoning has been substantially adopted by the present Court. "Our Constitution is colorblind, and neither knows nor tolerates classes among citizens," he wrote. "It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race." [9] He added that "the thin disguise of equal accommodations will not mislead anyone, nor atone for the wrong this day done." [10]

Whatever the merits of the argument, the country was preoccupied with the new problems of national industrial development and ready to put aside old controversies. Federal troops had been withdrawn from the South in 1877 in the compromise negotiated over the election of Hayes. Meanwhile with the free rein given by the Supreme Court, the Southern States proceeded to enact and to enforce strict segregation laws.[11]

Interestingly, the adoption of so-called Jim Crow laws did not occur on a large scale until some years after the Reconstruction had ended, and blossomed in full force only after the Supreme Court's approval of segregation.[12] The eminent southern historian, C. Vann Woodward, observes that—

> things have not always been the same in the South. In a time when the Negroes formed a much larger proportion of the population than they did later, when slavery was a live memory in the minds of both races, and when the memory of the hardships and bitterness of Reconstruction was still fresh, the race policies accepted and pursued in the South were sometimes milder than they became later. The policies of proscription, segregation and disfranchisement that are often described as the immutable "folkways" of the South, impervious alike to legislative reform and armed intervention, are of a more recent origin. The effort to justify them as a consequence of Reconstruction and a necessity of the times is embarrassed by the fact that they did not originate in those times. And the belief that they are immutable and unchangeable is not supported by history.[13]

No one can say what might have happened had not the Supreme Court cleared the way for the enactment of these laws requiring segregation. What did happen was widespread disfranchisement of

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[8] *Id.* at 48.
[9] 163 U.S. 537, 559 (1896).
[10] *Id.* at 562.
[11] C. Vann Woodward, *The Strange Career of Jim Crow* (Revised Edition, 1957), pp. 6, 34.
[12] *Id.* at 53–54, 56.
[13] *Id.* at 47.

the Negro, and a tightening pattern of segregation as Southern States around the turn of the century began to expand their public school systems. Whether in response to this or to the new opportunities in expanding northern industrial centers the migration of Negroes to the North grew, especially during and after World War I. With this, racial problems truly became nationwide, for the Negro, along with the right to vote and perhaps a better paying job, found discrimination and segregation in housing awaiting him in the North.

Meanwhile, as the 20th century progressed, the Supreme Court took a broader view of the Constitution. The commerce clause was expanded until the Court could say that it is as wide as the needs of the nation. Oddly, it was the commerce clause and not the Fourteenth Amendment that was first successfully invoked against segregation in transportation. In 1946, the Court held invalid a Virginia statute which required segregation on all buses in interstate as well as intrastate commerce, as an undue burden on interstate commerce in matters where uniformity is necessary.[14]

But during these years the Court also began to give new vitality to the civil rights amendments. In 1915, the Court struck down as a violation of the Fifteenth Amendment the Oklahoma "grandfather clause" by which Negroes were deprived of their right to vote.[15] When Oklahoma later devised a scheme to give permanent registration to voters who had voted in a previous election but require others (including most Negroes) to register within a 12-day period or be permanently disfranchised, the Court struck this, too, saying that "the Amendment nullifies sophisticated as well as simple-minded modes of discrimination.[16] In the same spirit the Court has stricken the white primary and various schemes to accomplish the same thing, holding finally that "It may now be taken as a postulate that the right to vote in . . . a primary . . . without discrimination by the State . . . is a right secured by the Constitution." [17]

Similarly, in the field of public education, after a number of cases holding that facilities for Negroes were not in fact equal, the Court finally held that "separate educational facilities are inherently unequal" and that segregated Negro plaintiffs had been deprived of the equal protection of the laws.[18]

And in the field of housing, where the doctrine of separate but equal has never been applied, the Court has gone on from holding racial zoning ordinances unconstitutional to holding that judicial enforce-

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[14] Morgan v. Virginia, 328 U.S. 373 (1946). See also Hall v. DeCuir, 95 U.S. 485 (1877); Louisville, New Orleans & Texas Ry. Co. v. Mississippi, 133 U.S. 587 (1890).

[15] Quinn v. U.S., 238 U.S. 347 (1915).

[16] Lane v. Wilson, 307 U.S. 268, 275 (1939).

[17] Smith v. Allwright, 321 U.S. 649, 661 (1944); Nixon v. Herndon, 273 U.S. 536 (1927); United States v. Classic, 313 U.S. 299 (1941).

[18] Brown v. Board of Education of Topeka, 347 U.S. 483, 495 (1954).

ment of racially restrictive private covenants is governmental action constituting a denial of equal protection.[19]

These cases have caused great controversy. The authority of the Supreme Court to require an end to segregation in public education, even its authority to overturn a doctrine that it had sanctioned for several decades, is being challenged. But this is not new for the Court. Only the unanimity of the Court in the school decisions and some of the other racial decisions mentioned above is new.

It can be observed that the Court has not assumed power over education as such. It simply applied a constitutional limitation on the States which applies to education in the same measure that it applies to State conduct of any other activity. Education is granted no immunity from the requirements of the Fourteenth Amendment.

Whether the Court of 1954 or the Court of 1896 was correct in its interpretation of the Fourteenth Amendment, the fact remains that to interpret is the established function of the Court. As Chief Justice Marshall declared in 1819, it is "a constitution intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." [20] Mr. Justice Field remarked in 1894, in response to a contention that the position of the Court was in conflict with two of his own previous opinions, "It is more important that the Court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations. Those doctrines only will eventually stand which bear the strictest examination and the test of experience." [21] Indeed there have been scores of prior decisions which the Court has directly overruled and many more in which previously enunciated doctrines have been substantially modified.[22]

This is not to say that everyone must agree with the Court. A decision may be characterized as wrong, improper, or unwise. Many so characterized the decision in *Plessy v. Ferguson* that interpreted the Fourteenth Amendment to permit segregation. Lincoln so characterized the Dred Scott decision. But, painful as it may be, those who disagree with the Court must, if they are to uphold the Constitution of the United States, accept the decision of the Court as the authoritative interpretation of the law of the land.

Solely out of "obedience to, and respect for, the judicial department of government," Lincoln opposed acts of interposition or resistance to the Dred Scott decision. "But we think the Dred Scott decision

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[19] Buchanan v. Warley, 245 U.S. 60 (1917); Shelley v. Kraemer, 334 U.S. 1 (1948), Barrows v. Jackson, 346 U.S. 249 (1953).

[20] McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819).

[21] Barden v. Northwestern Pacific R.R. Co., 154 U.S. 288, 322 (1894).

[22] See the opinion of Mr. Justice Byrnes in Edwards v. People of State of California, 314 U.S. 160 (1941).

is erroneous," he said. "We know the court that made it has often overruled its own decisions, and we shall do what we can to have it overrule this." [23] However, until the Court changed its mind or the country changed the Constitution, Lincoln called on the people to do their constitutional duty:

> We think its decision on constitutional questions, when fully settled, should control not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution as provided in that instrument itself. More than this would be revolution.[24]

In the light of this history, of these fundamental principles, and of the present requirements of the Constitution, the Commission conducted its studies and appraisal soberly but full of hope.

It is sobering to know that a substantial number of the people and of the public officials in one region do not yet accept the mandate to end racial discrimination in public education with all deliberate speed, and to know that there are a considerable number of counties where Negroes are denied the right to vote. Standing in the way of reasonable solutions to the difficulties involved in ending discrimination in all walks of our public life is the great stubborn fact that many people have not yet accepted the principles, purposes, or authority of the Fourteenth and Fifteenth Amendments. The legal dispute over the validity of these amendments has been settled by history—and by the Supreme Court, the only organ of our Government that can decide such questions. But the human response to these national rules is not settled. There remains the enduring American problem of obtaining the consent of the governed.

Moreover, this problem is not now limited to one region. The degree of racial discrimination in the field of housing that exists throughout the country, and is particularly critical in the great metropolitan centers of the North and West, suggests unwillingness on the part of a substantial portion of Americans to follow the rule of equal rights. Concentration of colored Americans in restricted areas of most major cities produces a high degree of school segregation even in communities accepting the Supreme Court's decision. With the migration of Negroes and Puerto Ricans to the North and West, and an influx of Mexicans into the West and Southwest, the whole country is now sharing the problem and the responsibilities. This is historically just, for the South alone was not responsible for slavery. Yankee slave traders, sailing from New England ports, purchased and carried to these shores the uprooted men and women of Africa, and sold them here, pocketing great profits.

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[23] Lincoln at Springfield, June 26, 1857. See Stern, *The Life and Writings of Abraham Lincoln* (Modern Library edition), p. 418.

[24] *Ibid.*

What is also sobering is the magnitude of the injury inflicted upon Negro Americans by the events recorded in this historical review. It is reflected in the poor education, low income, inferior housing and social demoralization of a considerable part of the Negro population. What compounds the problem is that these unfortunate results of slavery, discrimination, and second-class citizenship are in turn used by some more fortunate Americans to justify the perpetuation of the conditions that caused the injury.

Yet the Commission is hopeful because it has faith in the Constitution and in the American people. Other great problems have been successfully resolved through the process of persuasion ordained by the Constitution. The frictions, the tensions, the checks and balances, the division of power, the divergent views on great issues by the different levels and organs of government and by the people are all part of the American process of education and peaceful change. Out of it all, with deliberate speed, our republican federal system is generating the consent of the governed.

Already this has worked in the field of racial discrimination in many parts of our national life. Southern States themselves took the initiative in outlawing the hooded violence of the Ku Klux Klan.[25] Several Northern States have recently enacted far-reaching laws against discrimination in housing. The right to vote is established in most of the country, including many areas in the South. Segregation has ended in interstate transportation everywhere and in buses and streetcars in a number of Southern cities. Along with the voices of frustration, disobedience, and violence there have always been and are today the other voices advising, as Robert E. Lee advised his countrymen, that it "should be the object of all . . . to allay passion" and "give full scope to reason and every kindly feeling."[26]

Moreover, in but a few generations of freedom Negro Americans have made progress in nearly every field of endeavor and in increasing

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[25] *Alabama* has statutes forbidding flogging while masked (Ala. Code, t. 14, sec. 35), against abusing or beating accused persons (t. 14, sec. 354), against lynching (t. 14, sec. 355) or the wearing of masks in public (t. 14, sec. 351 (1)). *Arkansas* has mask and coercion laws (Ark. Stat. Ann., 1947, secs. 41–2601 et seq.), and also *Tennessee* (Tenn. Code Ann., t. 39, ch. 28, secs. 39–2801 et seq.). *Louisiana* prohibits the wearing of masks or hoods in public places (La. Rev. Stats. t. 14, sec. 313.) and *Kentucky* prohibits banding together for unlawful purposes (Ky. Rev. Stats. t. XV, ch. 437, sec. 437, 110). *Florida* prohibits the burning of crosses or wearing of masks (Fla. Stat. Ann., sec. 876. 11 et seq.), as does *Georgia* (Ga. Code Ann., sec. 26–5303a et seq.). *North Carolina* has statutes to prevent entering of jails for lynching purposes (N.C. Gen. Stats. sec. 162, 63 1952), and provides for lynching investigations (sec. 114–15). *Oklahoma* prohibits wearing of masks and disguises (Okla. Stat. Ann., 1951, t. 15, ch. 54). Anti-lynching laws are found in *South Carolina* (S.C. Code, 1952 Supp., sec. 16–234 et seq.), *Virginia* (Code of Va., 1950, sec. 18–36 et seq.) and *Texas* (Vernon's Tex. Code., t. 15, ch. 17A art. 1260a, sec. 1–5). There are statutes also in Virginia against the wearing of masks and burning of crosses (sec. 18–349.1 et seq.).

[26] Freeman, *Robert E. Lee,* vol. 4, p. 483.

numbers have reached high levels of educational, professional, artistic, political, and economic achievement.

Finally, the Commission is full of hope because, as Lincoln said, "intelligence, patriotism, Christianity, and a firm reliance on Him who has never yet forsaken this favored land are still competent to adjust in the best way all our present difficulty." [27] The "mystic chords of memory" remind us that dissent, even to the great propositions established in the Constitution, is in the American tradition, and that the white people of the South have behind them the tradition of Jefferson, Madison, and Jackson and the other great Southerners who drafted or fought for this country's original declarations of human equality and bills of rights.[28] The Commission shares Lincoln's faith that the whole American people will be "again touched . . . by the better angels of our nature." [29]

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[27] First Inaugural, March 4, 1861. See Stern, *op. cit. supra* note 23 at 656–57.
[28] *Id.* at 657.
[29] *Ibid.*

PART TWO. VOTING

CHAPTER 1. THE AMERICAN RIGHT TO VOTE: A HISTORY

The right to vote is the cornerstone of the Republic, and the key to all other civil rights. Upon this American fundamental, in the course of enacting the Civil Rights Act of 1957, there was agreement between Democrat and Republican, North and South, executive and legislative branches.

Said Attorney General Herbert Brownell, Jr.:

> . . . The right to vote is really the cornerstone of our representative form of government. I would say that it is the one right, perhaps more than any other, upon which all other constitutional rights depend for their effective protection, and accordingly it must be zealously safeguarded.[1]

Said Senate Majority Leader Lyndon Johnson, Democrat, of Texas:

> I voted for the Civil Rights Bill because I believe that the right to vote is the most important instrument for securing justice. I was convinced that steps were needed to safeguard that right.[2]

Said Senator Leverett Saltonstall, Republican, of Massachusetts:

> No one can deny that the right to vote is a fundamental, inalienable right of all people in a democracy. Every other constitutional right depends upon it. Without this, we have only an illusion of true democracy; history has shown us that when this basic right is abrogated, democracy and freedom fail.[3]

Said Senator Paul Douglas, Democrat, of Illinois:

> . . . If we can help to restore and maintain this right to vote, many of the other present discriminations practiced against Negroes, Indians, and Mexican-Americans will be self-correcting.[4]

The winning of the American Revolution, it is often supposed, made Americans free and self-governing overnight. But of the estimated 3,250,000 people (not including Indians) in the country at war's end, more than a million were still not free. According to one authority they included 600,000 Negro slaves, 300,000 indentured servants, some 50,000 convicts dumped by the mother country, and assorted debtors and vagrants sold into involuntary labor. And of the 2,000,000-odd Americans who were free, perhaps no more than 120,000 could meet the voting qualifications of their States.[5]

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[1] United States Senate, Hearings before the Committee on Constitutional Rights of the Committee on the Judiciary, 85th Congress, 1st Session, 1957, p. 2.

[2] Civil Rights Speech on the Senate Floor, January 20, 1959. (105 Cong. Rec. 808.)

[3] *Op. cit. supra* note 1, at 778.

[4] *Id.* at 103.

[5] William Miller, *A New History of the United States*, 1958, pp. 109–112.

At the time the Constitution became effective, the prevailing views upon the subject of suffrage were these: (1) the sovereign power was in the hands of the electorate, to be exercised through their representatives; (2) the electorate did not include all of the people; (3) the determination of which people should be included in the electorate was to be made by each of the several states for itself, and for the national government; (4) direct participation of the electorate in the selection of the personnel of the national government was limited to the lower house of Congress; (5) the actual conduct of elections of the members of the national legislative body was left to the several states, but a latent and limited power paramount to supersede such methods was reluctantly conferred upon the Congress; and (6) explicit methods—affording prominence to the several States—were detailed for the selection of the President. Because the organization of the National Government did not supplant determinative State power over matters pertaining to suffrage, it is essential to study the schemes of selection of the electorate reflected by State laws and constitutions in order to understand the development of suffrage in the United States.

A characteristic of the essentially empirical American system is that there is no single theory of suffrage.[6] If the electoral franchise is regarded as a *privilege*, considerations of the status of the individual in the political community, "the good of the state," and political expediency assume dominant proportions in selection of the criteria for voter qualification. If it is regarded as a *right*, whether by natural law or as an attribute of citizenship, ethical considerations founded upon the equal moral worth of all men in a free society raise suffrage to the plane of an essential means for the development of individual character.

First of all, Colonial America was a "man's world," though women were permitted to vote in Massachusetts from 1691 to 1780 and in New Jersey from 1776 to 1807. After the ratification of the Constitution and for nearly one hundred years there are only isolated instances of female voting. Women voted in local elections in Kentucky as early as 1838 and in Kansas in school elections as early as 1861. Wyoming as a territory in 1869 granted suffrage equality to women.[7]

The Colorado Constitution of 1876 made provision for women to vote in school elections and authorized the legislature to submit the question of full and complete woman suffrage to a referendum.[8] A few states had followed suit before the turn of the twentieth cen-

[6] W. J. Shepard in the *Encyclopedia of the Social Sciences*, 1937, Vol. XIV, pp. 447–450, enumerates and discusses five theories, each of which, at some time and place, could be cited as the rationale of suffrage then obtaining in some one or more of the American states. See also K. H. Porter, *A History of Suffrage in the United States*, 1918, pp. 4–6, 14.

[7] See C. A. M. Ewing, *American National Government*, 1958, p. 139.

[8] Constitution of Colorado—1876, Article VII, Sections 1 and 2, F. N. Thorpe, *American Charters, Constitutions, and Organic Laws—1492–1908*, 1909, Vol. I, p. 492.

tury, but it was not until 1920 that women were granted full suffrage throughout the United States by the Nineteenth Amendment.

As a "man's world," Colonial America also, limited suffrage to males of an adult age. The lowering of the uniform minimum-age requirement of 21 years in some States has been a most recent innovation.[9]

Under the early residence requirements, the adult males had to live within the geopolitical unit. The period of residence in the Colonies varied from two years in Pennsylvania and Delaware to six months in Georgia. Nonresidents could vote in elections in other areas of colonial New York and New Hampshire, if qualified by property ownership.[10]

Third, the colonial adult male resident had to have a certain status of freedom. The meaning of the term "freemen" varied among the colonies. In the four New England colonies of Massachusetts, Plymouth, Rhode Island, and Connecticut the term had special significance: a man had to have certain perscribed qualifications, secure approval of the appropriate body, be admitted and sworn in order to become a freeman. In the southern colonies the same term may have meant no more than freemen, in the literal sense, i.e., all those not slaves or indentured servants.[11] The term has overtones of the requirement of residence, into which it may have been assimilated in part; as to status, it seems to have become merged into property requirements.

Qualification of the colonial elector frequently was dependent upon satisfaction of religious standards, both positive and negative.[12] At one time in both Massachusetts and New Haven colony, freemen were required to be church members. Later this requirement was abandoned. Negative religious standards may have been more general. Apparently, Roman Catholics could not vote in most of the American colonies. Specific provisions excluding them existed in Rhode Island, New York, Maryland, Virginia; New Hampshire initially required freemen to be Protestants, but repealed this law immediately after enactment, though the positive standards of church membership undoubtedly had the same operative effect. There is evidence indicating that Jews could not legally vote, at least in New York and South Carolina. Quakers could not become freemen in Massachusetts and Plymouth, and their religious scruples against taking oaths often barred them from voting in other colonies.

A qualification upon colonial suffrage, closely related to religion, was that of morality. This qualification was peculiar to New England, although Virginia denied the electoral franchise to any "convict

[9] Eighteen years of age in Georgia (1945) and Kentucky (1957), 19 in Alaska (1958).
[10] C. F. Bishop, *History of Elections in the American Colonies*, 1893, pp. 66–69.
[11] *Id.* at 46–50, 92–97.
[12] For a detailed description of these qualifications see *Ibid.*, pp. 56–64.

or person convicted in Great Britain or Ireland during the term for which he is transported," even though otherwise qualified.[13] Similar provisions disfranchising persons for the conviction of certain types of felonies exist in some states today.

A few qualifications required at various times in some of the colonies do not fall conveniently within any of the preceding groups.[16] Foremost among these was a requirement of citizenship. Among the lesser qualifications were these: oaths of allegiance generally were required for acquisition of status where only those admitted as freemen held the suffrage: payment of certain taxes was sometimes made a condition precedent to exercise of the electoral franchise; and debtors and servants, as well as persons under guardianship, were sometimes excluded from the suffrage.

Emphatically most important among the restrictive qualifications upon colonial suffrage was the ownership of some form of property. This requirement was universally regarded, throughout all of the colonies, as an essential determinant of suffrage.[17] Property ownership was the *sine qua non* for the suffrage at the time of the Revolution. Shortly before the Revolutionary War property qualifications for voting existed in all the Colonies based either on the number of acres owned, or the value of the property, or the annual income from the property. Although there were alterations in amounts, this type of requirement continued after the Revolution.[18]

The foundation of all of these property-ownership qualifications was an old English principle that a man's right to vote derived from his possession of a material interest in the community.

These were the rules for the exercise of the suffrage, with which the draftsmen of the Constitution were familiar. There was little of uniformity in suffrage provisions among the several States, generally. Hence, there was a real and practical reason for leaving determination of qualifications of the suffrage to the States—completely apart from fear of a strong central government and the familiar arguments concerning States' rights.

An understanding of what has happened to the suffrage in America since the organization of the United States may be secured by a study of the provisions upon the subject in the various state constitutions adopted since that time. Voting qualifications have traditionally

[13] Bishop, *op. cit. supra* note 6, at 53–56.

[16] For specific examples of the qualifications mentioned in this paragraph see Bishop, *op. cit. supra* note 10, at 90–92.

[17] Bishop, *op. cit. supra* note 10, at 69–90, especially at 70; Porter, *op. cit. supra* note 6 at 3–5, 7–14. Both authorities agree that it was universal, the one common denominator in all colonies. Both note the South Carolina payment-of-taxes alternative (Bishop, *op. cit. supra* note 10, at 78; Porter, *op. cit. supra* note 6, at 9), but neither explains the manner of liability for payment of taxes upon a non-property-ownership ground.

[18] Porter, *op. cit. supra* note 6, at 11, 20.

been made a part of the constitution of each State in order to restrict the power of the legislature to tamper with them. Hence, State constitutional changes indicate the historic turning points and trend of thought on the matter of voting qualifications.

Between the end of the Revolution and 1800, eight States revised their constitutions and three new States came into the Union. In the 1780's, Georgia and New Hampshire abandoned their property qualifications in favor of simple taxpaying requirements. New constitutions were adopted soon after in Pennsylvania and South Carolina, but without change in property or taxpaying qualifications. Vermont was admitted to the Union in 1791 with a constitution that has been described as "the most liberal of all the country." [19] Kentucky joined the Union in 1792 with a constitution almost as liberal: all free males who had lived in the State two years and in the county one year were allowed to vote.[20]

Delaware moved from a property requirement to a mere payment of a State or county tax, and New Hampshire abandoned even its taxpaying requirement. Tennessee was the last State to enter the Union with a real-property requirement, in 1796.

The rise of vote-hungry political parties, the growth of popular interest in political battles, economic clashes between seaboard businessmen and inland farmers, reform movements, demand for "internal improvements" in the opening West—all of these helped make more and more Americans want and get the right to vote. State by State the struggle for broader suffrage went on, and the next quarter century saw the admission of nine more States, none of which set up a property qualification. Three—Ohio, Louisiana, and Mississippi—did adopt taxpaying qualifications. But after 1817 no new State admitted to the Union demanded either form of "material interest" of its voters.

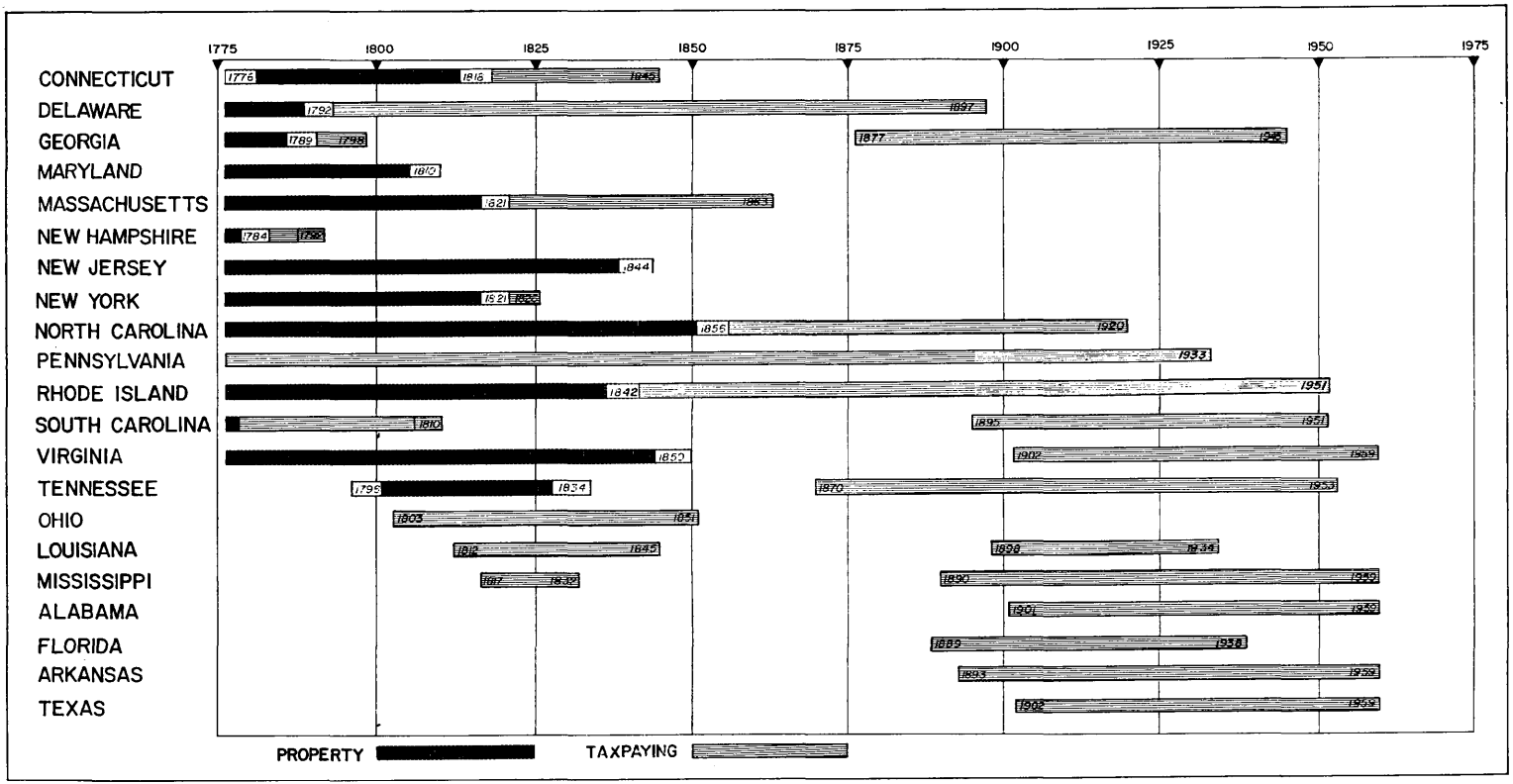
As property and taxpaying tests were being lowered and eliminated, various groups of "undesirables," hitherto denied the ballot by these tests, became otherwise eligible to vote. Most States, however, continued to forestall them by specific exclusions. In Ohio in 1803, persons with mental impairment and those convicted of certain crimes were denied the suffrage; and soldiers, sailors, and marines were disfranchised by residence requirements.[21] Louisiana in 1812 limited

[19] This classification was based principally upon two provisions in the Constitution. The first gave the right to vote to all freemen having a sufficient common interest with and attachment to the community. The second provided that all males twenty-one years of age or older, meeting the one-year residence requirement, being of a quiet and peaceable behavior, and willing to take an oath (or affirmation) stating that he would use his vote conscientiously, was entitled to all the privileges of a freeman, Thorpe, *op. cit. supra* note 8, Vol. VI, pp. 3752, 3757–3758.

[20] Constitution of Kentucky—1792, Art. III, Sec. 1 ; Thorpe, *op. cit. supra* note 8, Vol. III, p. 1269.

[21] Porter, *op. cit. supra* note 6, at 37–38.

Chart I. Duration of Property and Taxpaying Qualifications



suffrage to United States citizens.[22] Maine in 1819 excluded paupers and persons under guardianship,[23] and in 1818 Connecticut adopted a new constitution including the old requirement that voters must be of good moral character.[24] Thirty-six years later, in 1855, an amendment to this constitution, obviously aimed at the mounting flood of immigrants, required prospective voters to be able to read the constitution or statutes.[25]

In 1857, the Massachusetts constitution was amended to provide that all voters must be able to read the constitution in the English language and write their names. Exception was made for men over 60 and anyone who had already voted.[26] Two years later Massachusetts raised the bars still higher against Irish Catholic immigrants with an amendment requiring former aliens to remain in the State for two years after naturalization before they could vote.[27] During this same period of time, several Midwestern States encouraged immigration by giving the vote to aliens, who had declared their intention of becoming United States citizens.[28]

Post-colonial America, however, was virtually free of specific religious qualifications. An exception was a provision of the South Carolina constitution of 1778 which required that the voter "acknowledge the being of a God and believe in a future state of rewards and punishments." [29] There is no evidence that this provision was enforced, and it was left out of the 1790 constitution.

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It is the development of racial exclusions that is of primary importance to this phase of the Commission's study. The principal racial group affected is, of course, the Negro.

Exclusion from the polls on specifically racial grounds did not become general until there began to be appreciable numbers of Negroes who had gained their freedom. The Revolutionary constitutions of only two of the original States—Georgia and South Carolina—contained explicit provisions limiting suffrage to "white males."

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[22] Constitution of Louisiana—1812, Article II, Sec. 8, Thorpe, *op. cit. supra* note 8; Vol. III, p. 1382.

[23] Constitution of Maine—1819, Article II, Section 1; Thorpe, *op. cit. supra* note 8, Vol. III, p. 1649.

[24] Constitution of Connecticut—1818, Article VI, Section 2; Thorpe, *op. cit. supra* note 8, Vol. I, p. 544.

[25] Amendments to the Constitution of Connecticut, Article XI; Thorpe, *op. cit. supra* note 8, Vol. I, p. 550.

[26] Articles of Amendment to the Constitution of Form of Government for the Commonwealth of Massachusetts, Article XX; Thorpe, *op. cit. supra* note 8, Vol. III, p. 1919.

[27] *Ibid.*, Article XXIII; Thorpe, *op. cit. supra* note 8, Vol. III, p. 1920.

[28] Constitution of Wisconsin—1848, Article III, Sec. 1; Thorpe, *op. cit. supra* note 8, Vol. VII, p. 4080; Constitution of Indiana—1851, Article II, Section 2; Thorpe, *op. cit. supra note* 8, Vol. II, p. 1076; Constitution of Kansas—1859, Article V, Sec. 1; Thorpe, *op. cit. supra* note 8, Vol. II, p. 1251.

[29] Constitution of South Carolina—1778, Article XIII; Thorpe, *op. cit. supra* note 4, Vol. VI, p. 3251.

During the last few years of the eighteenth century and the early years of the nineteenth, however, the situation changed rapidly. Between the years 1792 and 1838 Delaware, Kentucky, Maryland, Connecticut, New Jersey, Virginia, Tennessee, North Carolina, and Pennsylvania altered their constitutions to exclude Negroes. Furthermore, Negroes were denied the ballot by the constitution of every State except Maine that came into the Union from 1800 to the eve of the Civil War. Only in New England and New York, where they were few, was there no exclusion of Negroes on racial grounds; and in New York the Negro's right to vote was limited by a property-owning and taxpaying qualification not applicable to whites.[30]

The development of suffrage in the United States to the time of the Civil War makes clear that the principle of universal suffrage was never practiced during that period.[31] As the Commission on Civil Rights is specifically charged with the duty of investigating alleged denials of the right to vote, the Commission has recognized the importance of considering the nature, development, and extent of these rights before evaluating any possible interference.

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[30] Porter, *op. cit. supra* note 6, at 90.

[31] Subsequent developments are considered in the next Chapter.

CHAPTER II. VOTING IN THE SOUTH AFTER 1865

The familiar Reconstruction story needs only brief review. With the war ended and Lincoln dead, President Andrew Johnson sought to reorganize the former Confederate States in the conciliatory manner that his predecessor had planned. Provisional governors were appointed to supervise governmental reorganization in each State, and an Amnesty Proclamation was issued enabling all but former high officials of the Confederacy to vote in the reorganization elections.[1] Under Johnson's plan, the freed Negroes would not vote because the existing antebellum laws of the affected States excluded Negroes from the polls. This was most offensive to the Radical Republican leaders, particularly Senator Charles Sumner, Representative Thaddeus Stevens, and Chief Justice Salmon P. Chase, who were committed to Negro enfranchisement.

During 1865, the Johnson administration plan was followed. Conventions or legislative sessions were held in Alabama, Arkansas, Georgia, Florida, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia. Texas followed in 1866. Not one of the ten States extended suffrage to Negroes. Instead, several of the Southern States enacted "Black Codes" again subjecting Negroes to humiliating discrimination. The codes provided among other things that:

> "Persons of color" . . . might not carry arms unless licensed to do so; they might not testify in court except in cases involving their own race; they must make annual written contracts for their labor, and if they ran away from their "masters" they must forfeit a year's wages; they must be apprenticed, if minors, to some white person, who might discipline them by means of such corporal punishment as a father might inflict upon a child; they might, if convicted of vagrancy, be assessed heavy fines, which, if unpaid, could be collected by selling the services of the vagrant for a period long enough to satisfy the claim.[2]

To the Radical Republicans, the denial of Negro suffrage and the enactment of the "Black Codes" was proof enough that the South could not be treated with Johnson's brand of benevolence. It was their view, not Johnson's, that finally prevailed. Then Congress passed the first Civil Rights Act, which anticipated the Fourteenth Amendment in declaring all persons born in the United States, excluding Indians not taxed, to be citizens of the United States.[3]

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[1] May 29, 1865, 13 Stat. 758.

[2] John D. Hicks, *The American Nation*, The Riverside Press, Cambridge, Mass., 1949, p. 21.

[3] 14 Stat. 27 (1866).

Although President Johnson issued a proclamation declaring the Rebellion at an end on April 2, 1866,[4] Congress still refused to recognize the credentials of Southern representatives and declared that it would determine when a State should be admitted.

On June 13, 1866, Congress proposed the Fourteenth Amendment.

1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[5]

Of the Southern States, Tennessee alone ratified the proposed amendment and was readmitted on July 24, 1866.[6] The other ten ex-Confederate States rejected the offer to be readmitted upon ratification of the Amendment.

In December 1866, Senator James G. Blaine of Maine demanded Negro suffrage clauses in all the Southern constitutions, and three months later Congress passed an act that according to its title was designed to "provide for a more efficient government of the Rebel States."[7] The act declared that no government then existed in the ten ex-Confederate States; this had the effect of overturning the governments set up under the administration plan. The act divided the South into five military divisions and required of each State, before it could be declared entitled to representation in Congress, (1) that Negroes be admitted to suffrage when elections for delegates to the constitutional conventions were held; (2) that the new constitutions provide permanently for Negro voting, and (3) that the Fourteenth Amendment be ratified.

An act passed on March 23, 1867, designated who might vote for delegates to the conventions and moved to enfranchise the Negroes by simply not excluding them—although excluding certain white Southerners.[8] Reconstruction, conducted under military rule, was now begun.

In the South, Negroes and Radical Republicans soon were in command of the ballot box; Radical Governors were in command of Negro militia; and carpetbaggers were in command of State treasuries.

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[4] 14 Stat. 758 (1866). This proclamation, however, did not apply to Texas. Another proclamation followed in August declaring the rebellion at an end in that State. 14 Stat. 814 (1866).

[5] The second section provided for reduction of representation in Congress in the event of the abridgement of the right to vote in Federal elections, and the fifth authorizes enactment of enforcement legislation.

[6] 14 Stat. 364 (1866).

[7] 14 Stat. 428 (1867).

[8] 15 Stat. 2 (1867).

The Southern white man's answer was the Ku Klux Klan, founded in Pulaski, Tennessee, and commanded by General Nathan Bedford Forrest. Although always ready with the whip and the bucket of tar and feathers, the Klan was most active at election time. In some desperation, Congress passed enforcement acts [9] that included a prohibition against wearing masks on a public highway for the purpose of preventing citizens from voting. The Klan movement declined, not so much as a result of the new laws as through the withdrawal of moderate men of influence who could not stomach its bloody violence.

Meanwhile, the Fourteenth Amendment was ratified on July 28, 1868. Section 1 of the Fifteenth Amendment, ratified on March 30, 1870, declared:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Negro suffrage had not yet gained widespread currency throughout the nation. Extension of the suffrage, with this single exception, had always been an evolutionary, rather than a revolutionary, process. Large numbers of Negroes were members of the Southern State assemblies but were largely dominated by the military district commanders. The result of all this was that ratification of these two amendments by the ten Southern States was in large measure the consequence of Congressional coercion.

Having adopted constitutions consistent with the Fifteenth Amendment, the former Confederate States undergoing reconstruction were all readmitted to the Union by 1870.

In 1877, Reconstruction ended with the withdrawal of Federal troops, and control of the South was returned to its own white leaders.

The South's new leadership was moderate and conservative. Its aim was not reform, but rebuilding. Eager to industrialize, it was hungry for Northern capital. Congressional coercion of Negro suffrage in the South was at an end.

Northerners in turn, weary of the "bloody shirt" and eager for conciliation, were eminently gratified. Amid the booming business expansion of the period, financiers and industrialists especially welcomed the "soundness" of leading Southern opinion. *Harper's Weekly*, for decades violently anti-Southern, now observed that Southern Democracy "is wonderfully like the best Northern Republicanism." [10]

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[9] The Civil Rights Enforcement Act of May 31, 1870, 16 Stat. 140, later amended by the Act of February 28, 1871, 16 Stat. 433; the Ku Klux Klan or Anti-lynching Act of April 20, 1871, 17 Stat. 13.

[10] Quoted in William B. Hesseltine, *The South in American History*, Prentice-Hall, 1943, p. 568.

The New York *Tribune*, once a major voice of Abolition, said that the Negroes had been given "ample opportunity to develop their own latent capacities, but instead had proven that "as a race they are idle, ignorant, and vicious." [11] It was a sentiment shared by much of the Northern press.

The courts, too, seemed generally agreed that the battle flags should be stored away. In decision after decision, they took pains to give the most limited interpretation possible to the Fourteenth and Fifteenth Amendments.[12] In 1883, the Supreme Court declared parts of the Civil Rights Acts unconstitutional.[13]

While the North looked the other way, the Southern conservatives began fashioning a political structure according to their own necessities. In that structure, there was a place for the Negro only when he was needed. For some 15 years the legal sanctions that had given the vote to the Southern Negro remained on the books, but on election day the Negro generally remained at home. To keep Negroes from the polls and thus consolidate white control, ingenious and sometimes violent methods were employed. Porter has succinctly catalogued the practices employed:

> The activities of the Ku-Klux have been immortalized in book and play. Less dramatic were the practices of brute violence and intimidation, clever manipulation of ballots and ballot boxes, the deliberate theft of ballot boxes, false counting of votes, repeating, the use of 'tissue' ballots, illegal arrests the day before election, and the sudden removing of the polls.[14]

These methods were eminently successful. It is true that some Negroes *did* vote and, in rare instances, some even held office. But their vote was closely controlled, and was used only when a white faction needed it to assure victory.

Too often, election day, especially in the Deep South, was bloody. Rioting in the 1878 elections in Louisiana left more than 30 dead, and the 1884 elections were only slightly less violent. What fraud could not do, violence accomplished.

Responsible Southerners deplored the situation; many others simply would have no part of politics. One of them, later writing of the era, expressed sentiments that were widely shared:

> We got rid of Negro government, but we got in place of it a government resting upon fraud and chicanery, and it very soon became a serious question which was worse, a Negro government or a white government resting upon stuffed ballot boxes.[15]

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[11] Quoted in C. Vann Woodward, *Origins of the New South*, 1877–1913. Louisiana State University Press, 1951, p. 216.

[12] Slaughter House Cases, 16 Wall. 36 (1873), United States v. Cruckshank, 92 U.S. 542 (1876), Virginia v. Rives, 100 U.S. 313 (1880), *Ex parte* Virginia, 100 U.S. 339 (1880) as to the Fourteenth Amendment; United States v. Reese, 92 U.S. 214 (1875) as to the Fifteenth Amendment.

[13] *Civil Rights Cases*, 109 U.S. 3 (1883), United States v. Harris, 106 U.S. 629 (1883).

[14] K. H. Porter, *A History of Suffrage in the United States*, 1918, pp. 196–97.

[15] William L. Royall, *Some Reminiscences*, New York, 1909, pp. 201–202.

Because of the frequent charges of fraud and corruption, the U.S. House of Representatives often closely scrutinized the returns in Southern congressional elections. Fraud was the basis for contesting 16 of the 20 disputed House elections from Virginia between 1874 and 1900.[16] Of 183 contested House elections in approximately the same period, 107 were in the South.[17]

Fraud, accomplished in part with controlled Negro votes, prompted moves toward systematic disfranchisement of Negroes. But probably the greatest motivating force was the threat posed to the solidarity and dominance of the Democratic Party by the Southern Farmers Alliance. This agrarian protest movement, which sprang up to challenge the business-minded conservatives during the farm depression of the 1870's and 1880's was everywhere identified with, and in many places merged with, the Populist Party.

Beginning with the campaigns of 1888, both the conservatives and the Populist-Alliance used Negro voters in great numbers.

> In the bitter disputes of the 1890's, sometimes fought out within the Democratic party (as by Ben Tillman in South Carolina), sometimes involving a third party challenge (as by Tom Watson in Georgia), sometimes involving fusion movements (as by Republicans, Negroes, and Populists in North Carolina), the Negro played a key role. Either as a voter or as an issue, the Negro was a major factor in the politics of the period.[18]

In North Carolina, where the future of the Democratic party was threatened by a fusion of Republicans and Populists, over 1,000 Negroes held political office at one time in the mid-1890's.

The Negro, it appeared, might soon hold the balance of power in Southern politics. White factions, though bitterly at odds with each other, began to close ranks against him. It was not Emancipation or Reconstruction but this move to preserve white political dominance that also brought the beginnings of mass compulsory segregation called Jim Crow. This was the timetable of measures aimed at Negro voting:

1889 **Florida** adopted a poll tax as a prerequisite for voting and set up a system of confusing "multiple" ballot boxes. (The latter statute was repealed in 1895.)

1890 **Mississippi Constitution:**

1. Increased the residence requirement to two years for the state and one year for the election district.
2. Instituted the payment of a poll tax as a prerequisite for voting.
3. Required that registration must be completed four months before an election.
4. Instituted a literacy or "understanding" requirement.
5. Specified crimes for which conviction could cause disqualification at the polls.

1890 **Tennessee:** Adopted payment of a poll tax as a voting prerequisite.

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[16] Vladimer O. Key, *Southern Politics in State and Nation,* A. A. Knopf, 1949, p. 540.
[17] Woodward, *op. cit. supra* note 11, at 326.
[18] Hugh D. Price, *The Negro and Southern Politics,* New York, 1957, pp. 15–16.

1893 **Arkansas:** Adopted payment of a poll tax as a voting prerequisite.

1895 **South Carolina Constitution:**

1. Required a poll tax as a prerequisite of voting.
2. Required that all assessed taxes must be paid up.
3. Instituted disqualifications for certain criminal convictions.
4. Made a property qualification an alternative to the literacy requirement.

1898 **Louisiana Constitution:**

1. Provided for a poll tax and required that the receipt for payment be shown by the voter.
2. Made a property test the alternative for a literacy test.
3. Instituted the "grandfather clause," which qualified as voters those who could vote in 1867 or the descendants of such persons, providing they registered within a year as permanent voters.

1901 **Alabama Constitution:**

1. A poll tax as a prerequisite of voting.
2. Criminal disqualifications.
3. Property qualifications as an alternative to a literacy qualification.

1902 **North Carolina:**

1. Instituted a "grandfather clause," an educational requirement, and poll tax as a prerequisite of voting.
2. Extended the residence requirement.

1902 **Virginia Constitution:**

1. Provided for a poll tax as a prerequisite of voting.
2. Instituted a literacy test and a "grandfather clause." [19]

1902 **Texas:** Adopted a poll tax as a prerequisite of voting.

1908 **Georgia:** Which had a poll tax as early as 1877, added a literacy requirement.

The members of the conventions and legislatures that ratified the *fait accompli* of Negro disfranchisement left little room for misunderstanding of their motives. The chairman of the suffrage subcommittee in the Virginia convention declared: "I expect the examination with which the black men will be confronted to be inspired by the same spirit that inspires every man upon this floor and in this convention. *I do not expect an impartial administration of this clause.*" [20] Arguing in favor of the literacy requirement in the North Carolina legislature, a member concluded that "there's not the slightest difference of principle between that law [the Massachusetts' educational qualification for suffrage] and the one we now have under consideration. Our's is to protect us against ignorant negroes, their's [*sic*] to protect them against ignorant foreigners." [21]

Purification of elections was frequently given as the justification for restriction of the electorate, although how genuine this justification was is open to some question. A delegate in the Alabama con-

[19] Strictly speaking, this requirement was somewhat different from the so-called grandfather clauses in that it provided that any person or *son* (not descendant) of a person who served in time of war in the Army or Navy of the United States or of the Confederate States or of any State of the United States or of the Confederate States was eligible to register.

[20] Quoted in Porter, *op. cit. supra* note 14, at 218.

[21] Helen G. Edmonds, *The Negro and Fusion Politics in North Carolina, 1894–1901,* Chapel Hill, the University of North Carolina Press, 1951, p. 182.

vention declared that "the whole scheme is not in favor of fair elections. I will not question the motives of those who prepared it, but I declare to you that the scheme, as presented by the majority of this committee, permits the most infamous frauds that were ever planned in Alabama." [22]

Other expressions substantiate the suspicion that the elimination of corrupt practices was used as an excuse for evading the clear intent of the Fifteenth Amendment. The President of the Louisiana Constitutional Convention stated frankly in his closing remarks:

> We have not drafted the exact Constitution that we should like to have drafted; otherwise we should have inscribed in it, if I know the popular sentiment of this state, universal white manhood suffrage, and the exclusion from the suffrage of every man with a trace of African blood in his veins. . . . What care I whether the test we have put be a new one or an old one? What care I whether it be more or less ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the Negro from voting, and isn't that what we came here for? [Applause.] [23]

It is very easy, at this distance from the events, to conclude that all white Southerners agreed with these sentiments and supported the laws restricting suffrage. Actually, many Southerners opposed these programs of statutory or constitutional revision. Opposition to a constitutional convention in Virginia delayed action in that State for more than ten years and the convention was approved by only 56 percent of those voting. A suffrage amendment was defeated in a Louisiana referendum by what were called "disgraceful" methods. The convention in South Carolina was approved by the close margin of 31,402 to 29,523, and in Mississippi the legislature issued the call for the convention without a referendum. In Alabama, opponents of the convention cast 39.3 percent of the referendum vote and carried 25 of the 66 counties. Only in Alabama was the constitution itself submitted to the people. In North Carolina the suffrage amendment was approved by 58.6 percent of those voting and failed to receive a majority in 32 of the 97 counties.[24]

This opposition in the various States was located in sections predominantly white and was motivated by the fear that whites as well as Negroes would be disfranchised. The expectation or desire that the poll tax, literacy and registration procedures would restrict voting among poor whites as well as Negroes was not so frequently in evidence but was expressed. A delegate to the Virginia convention put it this way:

> The need is universal, not only in the country, but in the cities and towns; not only among the blacks, but among the whites, in order to deliver the State from the burden of illiteracy and poverty and crime, which rests on it as a deadening

[22] *Official Proceedings of the Constitutional Convention of the State of Alabama*, 1901, III, p. 2828 (1941).

[23] *Official Journal of the Constitutional Convention of the State of Louisiana*, 1898, p. 380 (1898).

[24] This information is taken from Frederick D. Ogden, *The Poll Tax in the South*, University of Alabama, 1958, pp. 12, 13, 18, 25–28.

pall. . . . It is not the Negro vote which works the harm, for the Negroes are generally Republicans, but it is the depraved and incompetent men of our race, who have nothing at stake in government, and who are used by designing politicians to accomplish their purposes, irrespective of the welfare of the community.[25]

An Alabama lawyer made a similar point, writing four years after the 1901 convention:

> How to get rid of the venal and ignorant among white men as voters was a far more serious and difficult problem than how to get rid of the undesirable among the Negroes as voters. While it was generally wished by leaders in Alabama to disfranchise many unworthy white men, as a practical matter it was impossible to go further than was done and secure any relief at all. . . .
>
> To rid the State eventually, so far as could possibly be done by law, of the corrupt and ignorant among its electorate, white as well as black, the poll tax and vagrancy clauses were put into the constitution.[26]

Some of these voter qualifications have subsequently been abandoned or held unconstitutional by the courts. The poll tax has been increasingly attacked over the years as a device that restricts suffrage generally.[26a] Under influence of this new thinking, one State after another repealed the poll tax as a voting qualification until only five remain. The cumulative provision, often the most onerous feature of the tax, has also been considerably reduced.

The accompanying chart shows the pertinent information on the poll tax in the five states still using it.

The "grandfather clause" was intended primarily to disfranchise Negroes while sparing illiterate whites. The device was outlawed in 1915, when the Supreme Court held a 1910 Amendment to the Oklahoma Constitution which embodied a grandfather clause to be in violation of the Fifteenth Amendment.[27]

The most lasting and effective means of disfranchising Negroes arose from the unique political system of the South. When Southern whites assumed control after Reconstruction, the Republican Party began a rapid decline until, in some of the Deep-South States, it virtually ceased to exist. The Republican Party, associated with Reconstruction in general, stood specifically for attempts to insure the vote for Negroes, who had been its firm supporters during Reconstruction. For most Southerners, loyalty to the South and to the Democratic Party became synonymous—and until the coming of the New

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[25] *Report of the Proceedings and Debates of the Constitutional Convention of Virginia 1901–2*, p. 2998, quoted in Key. *op. cit. supra* note 16, at 534.

[26] Francis G. Caffey, "Suffrage Limitations at the South," *Political Science Quarterly*, vol. 20, March 1905, pp. 56–57.

[26a] The Truman Committee Report included figures showing that in the 1944 Presidential election the percentage of potential voters voting in the non-poll tax States was over three times the percentage in poll tax States. The Committee recommended that, failing prompt State action, the poll tax be outlawed either by act of Congress or by constitutional amendment. (*To Secure These Rights*, Report of the President's Committee on Civil Rights, 1947, p. 160.)

[27] Guinn v. United States, 238 U.S. 347 (1915).

Deal in the 1930's it was taken for granted that all Negroes were Republican.

Thus the South became a one-party region. Since the turn of the century the Democratic Party has dominated all State government and, except for a few localities (principally in Virginia, North Carolina and Tennessee), local government as well. With rare exceptions, the only genuine contests for public office have been in the nominating primaries of the Democratic Party, where victory is tantamount to election. Republican candidacies have been perfunctory or non-existent.

To be eligible to vote at a direct primary, a person must be a qualified voter under the laws of the State but another qualification, party membership, was always added in the South and in a majority of other States as well on the logical premise that only members of a party should take part in the selection of party nominees. The Southern laws, however, had some distinctive features. In most of these states, the administration of the direct primary was delegated, by statute, to the individual party, making the party responsible for holding its own primary including the determination of who was eligible to vote. Leaders of the Democratic Party determined that Negroes could not be Democrats and automatically excluded them in some States.[27A] A Democratic primary for whites only was finally given the popular name, white primary.

Once the constitutionality of the white primary was challenged, it was possible to defend it on the ground that a primary was not an election in the sense in which the word was used in the Constitution of the United States. The Supreme Court had provided the basis for this position in an election case arising in the North and not involving any racial questions.[28] However, the Court would not allow a State law specificially excluding Negroes from the primary of the Democratic Party.[29] This and subsequent decisions prohibiting the white primary were based, not on the Fifteenth Amendment, but on the equal protection clause of the Fourteenth Amendment, asserting that a State by its own action could not enforce a white primary.[30] The Court finally upheld the exclusion of Negroes when it concluded that a white primary resulted from the action of a political party, not a State.[31]

Constitutional interpretation continued to evolve, and the Court eventually held that a direct primary is an election within the meaning of the Constitution.[32] Thereafter, in *Smith* v. *Allwright*,[33] it reversed

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[27A] Material submitted to the Truman Committee reveals that in at least one county in Texas the white primary was also used to prevent Mexican-Americans from voting.

[28] Newberry v. United States, 256 U.S. 232 (1921).

[29] Nixon v. Herndon, 273 U.S. 536 (1927).

[30] Nixon v. Condon, 286 U.S. 73 (1932).

[31] Grovey v. Townsend, 295 U.S. 45 (1935).

[32] United States v. Classic, 313 U.S. 299 (1941).

[33] 321 U.S. 649 (1944).

TABLE 1. *The Poll Tax in the Five States Still Using It* [a]

State	Annual rate	Cumulative	Maximum State	Maximum additional local tax (optional)	Exemptions	Percent exempt (1950) because of age	Due date	Approximate number of months due before—		Proof of payment	Disposition of proceeds
								General election	Direct primary		
Alabama	$1.50	2 years preceding the election.	$3.00	None	1. Age 45 and over 2. Those permanently and totally disabled from following any substantially gainful occupation with regularity, whose taxable property does not exceed $500. 3. Those blind or deaf. 4. Those with honorable military service during time of war. 5. Members of State Guard during active membership and those who have served 21 years.	39.8	Only between Oct. 1 and Feb. 1.	9	3	List of voters	Public schools.
Arkansas	1.00	None	1.00	None	1. Women not desiring to vote. 2. Any citizen while serving in U.S. Armed Forces. 3. Those who become 21 after the time of assessing taxes next preceding an election.	----------	On or before Oct. 1.	1	10	Receipt or other evidence.	Do.

Mississippi	2.00	2 years preceding the election.	[b] 4.00	$1.00 [c] counties, cities, towns.	1. Age 60 and over. 2. Those deaf and dumb, blind or maimed by loss of a hand or foot. 3. Those who did not have opportunity to pay because they were a veteran or member of U.S. Armed Forces.	18.0	On or before Feb. 1.	9	18	Presentation of receipt to vote in primary satisfactory evidence to vote in general election.	Do.
Texas	1.50	None	1.50	$0.25 counties; $1 cities (assessed in some cities to vote in municipal elections).	1. Age 60 and over. 2. Indians not taxed; those insane, blind, deaf, or dumb; those who have lost a hand or foot; those permanently disabled, all veterans of foreign wars with 40 percent or more disability. 3. Members of State militia except for $1 tax for schools. 4. Those, at time of election, or within 18 months prior, who were members of U.S. Armed Forces. 5. Those becoming 21 after Jan. 1 and before following election.	16.2	Before Feb. 1.	9	6	Receipt or sworn affidavit.	Public schools, except $0.50 for general revenue needs.

See footnotes at end of table.

TABLE 1. *The Poll Tax in the Five States Still Using It* [a]—Continued

State	Annual rate	Cumulative	Maximum State	Maximum additional local tax (optional)	Exemptions	Percent exempt (1950) because of age	Due date	Approximate number of months due before—		Proof of payment	Disposition of proceeds
								General election	Direct primary		
Virginia	$1.50	3 years preceding election.	[c] $4.50	$1 counties, cities, towns. [c]	1. Civil War veterans, their wives or widows. 2. Those pensioned by State for military services. 3. Active members and recently discharged members of U.S. Armed Forces in time of war. 4. Those who become 21 after Jan. 1 and before the following election.	----------	6 months before general election.	6	3	List of poll-tax payers.	Public schools, except $0.50 reverts to county or city treasury.

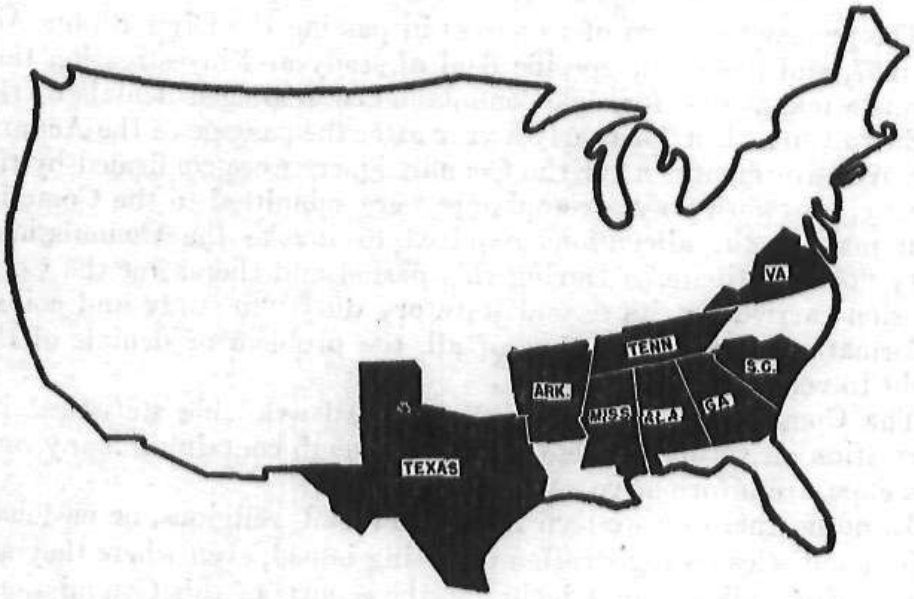
[a] This table is from Frederic D. Ogden, *The Poll Tax in the South*, ch. 2.

[b] Person must pay during 2 successive years to vote in primary but may pay at one time to vote in general election.

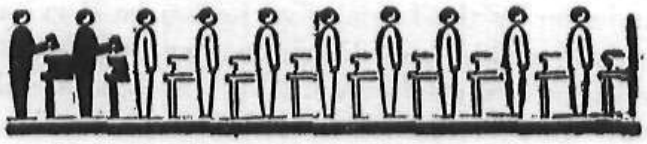
[c] None actually levied.

CHART II

SUFFRAGE IN POLL TAX STATES—1944



Potential and Actual Voters in the 1944 Presidential Elections



In the 8 Poll Tax States,* 18.31 percent voted

In the 40 Non-poll Tax States 68.74 percent voted

*Since 1944, Georgia, South Carolina, and Tennessee have abandoned the poll tax.
Credit:
Adapted from *To Secure These Rights*, p. 38.

itself on the white primary, holding that no matter what part the political party played, the party in holding a primary was acting in conformance with State laws and under the protection of the State so that ultimately the white primary rested upon State action. Although some of the States' Democratic parties attempted to evade the reasoning of *Smith* v. *Allwright*, the white primary in any form has been judicially condemned.[34] With the realization that there was no way around the decision, most of the Southern States that practiced the white primary accepted, to varying extents, Negro participation in the nomination processes of the Democratic parties.

[34] Elmore v. Rice, 72 F. Supp. 516 (E.D.S.C., 1947) *aff'd* 165 F. 2d 387 (4th Cir. 1947), *cert. denied.*

CHAPTER III. A STATISTICAL VIEW OF NEGRO VOTING

The primary concern of Congress in passing the Civil Rights Act of 1957, and the single specific field of study and investigation that it made mandatory for this Commission, was alleged denials of the right to vote. But for nearly a year after the passage of the Act and for over five months after the Commissioners were confirmed by the Senate, no sworn voting complaints were submitted to the Commission making the allegations required to invoke the Commission's duty "to investigate." During this period and thereafter the Commission carried out its second statutory duty, "to study and collect information" concerning, first of all, the problem of denials of the right to vote.

The Commission began by collecting all available statistical information on voting. These statistics, though containing many serious gaps, are informative.

In no northern or western State are racial, religious, or national-origin statistics on registration or voting issued, even where they are kept. From all accounts, including the reports of this Commission's State Advisory Committees and the compilation of State laws made for the Commission by the Legislative Reference Service of the Library of Congress, problems of discriminatory denials of the right to vote in these States are relatively minor, both statistically and as a matter of law. In several States, Indians face certain limitations, and the constitution of Idaho provides that "Chinese, or persons of Mongolian descent, not born in the United States" shall not vote, a holdover from the era of oriental exclusion. In New York there is the language barrier to voting by citizens of Puerto Rican origin, discussed below. And there are *de facto* denials of the right to vote in northern areas that exclude or discourage Negro residence altogether. For example, the report of the Committee on the Right to Vote of the Indiana State Advisory Committee stated that in 1946 it was found that there were no Negro residents in 30 of the State's 92 counties. The Indiana report added that—

> in a number of the county seats and small communities in the counties signs are visible advising "Niggers don't let the sun go down on you here!" . . . Obviously, if one cannot establish residence in one-third of the State, he cannot meet the qualifications for voting.

The Indiana committee concluded that in these areas "the Negro in Indiana is being deprived of his right to vote by indirection."

In the South, according to the best estimates available, Negro registration has climbed from 595,000 in 1947 to over 1 million in 1952, and to 1.2 million in 1956. But this represents only about 25 percent of the nearly 5 million Negroes of voting age in the region in 1950. By

contrast, about 60 percent of voting-age Southern whites are registered. But generalizations are misleading because the picture varies from State to State and from county to county within each State.

The following summaries of the available statistical information on voting in the respective Southern States all use the 1950 Census figures, the latest ones available, for voting-age and total population breakdowns by race. Estimates of the percentage of Negroes registered to vote are derived from these 1950 Census figures and the latest available registration figures. These registration or voter qualification figures are released officially by the State governments in Arkansas, Florida, Georgia, Louisiana, South Carolina, and Virginia. In North Carolina, county boards of elections submitted figures to the Commission's State Advisory Committee. The secondary sources used in the other States are described on each of the following summaries. No racial registration statistics by counties were available for Tennessee.

TABLE 2.

ARKANSAS

Source: 1950 census; 1958 registration figures from State Auditor: Arkansas has no "registration" as such. Payment of poll tax is equivalent of registration. The following figures are official poll tax payments.

The total 1950 voting-age population of Arkansas was 1,108,366. Of this total, 880,675 were white and 227,691 were nonwhite. Thus nonwhites were 20.5 percent of the total voting-age population.

In 1958 the total number of registered voters in Arkansas was 563,978. Of this total, 499,955 were white and 64,023 were nonwhite. Thus nonwhites were 11.4 percent of all registered voters.

The number of nonwhites registered in 1958 represented 28.1 percent of the total 1950 population of voting-age nonwhites.

Arkansas has 75 counties. In six counties, nonwhites were a majority of the 1950 voting-age population. In all of these counties some nonwhites were registered to vote in 1958.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*14
Some, but fewer than 5 percent	1
5 to 25 percent	28
25.1 to 50 percent	28
More than 50 percent	4
Total	75

*Nonwhite population of voting age in these 14 counties in 1950 was 83.

TABLE 3.

FLORIDA

Source: 1950 census; 1958 registration figures from Florida Secretary of State, published regularly.

The total 1950 voting-age population of Florida was 1,825,513. Of this total, 1,458,716 were white and 366,797 were nonwhite. Thus nonwhites were 20.1 percent of the total voting-age population.

In 1958 the total number of registered voters in Florida was 1,593,453. Of this total, 1,448,643 were white and 144,810 were nonwhite. Thus nonwhites were 9.1 percent of all registered voters.

The number of nonwhites registered in 1958 represented 39.5 percent of the total 1950 population of voting-age nonwhites.

Florida has 67 counties. In one county, nonwhites were a majority of the 1950 voting-age population. In this county, 13.2 percent of the 1950 voting-age nonwhites were registered to vote in 1958.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number o counties
No nonwhite registered	*3
Some, but fewer than 5 percent	3
5 to 25 percent	12
25.1 to 50 percent	30
More than 50 percent	19
Total	67

*Nonwhite population of voting age in these 3 counties in 1950 was 2,944.

TABLE 4.

GEORGIA

Source: 1950 census; 1958 registration figures from official county reports released by Secretary of State of Georgia, published in *Atlanta Constitution*, September 29, 1958

The total 1950 voting-age population of Georgia was 2,178,242. Of this total, 1,554,784 were white and 623,458 were nonwhite. Thus nonwhites were 28.6 percent of the total voting-age population.

In 1958 the known total of registered voters in Georgia was 1,291,597. Of this total, 1,130,515 were white and 161,082 were nonwhite. Thus nonwhites were 12.5 percent of all registered voters.

The number of nonwhites registered in 1958 represented 25.8 percent of the total 1950 population of voting-age nonwhites. Georgia has 159 counties. In 29 counties, nonwhites were a majority of the 1950 voting-age population. In two of these counties, no nonwhite was registered to vote in 1958. In 11 of the other 27 counties, the number of nonwhites registered in 1958 was fewer than 5 percent of the county's 1950 voting-age nonwhite population. In one, nonwhite registration figures were unavailable.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
Nonwhites registered	*6
Some, but fewer than 5 percent	22
5 to 25 percent	53
25.1 to 50 percent	50
More than 50 percent	28
Total	159

*Nonwhite population of voting age in these 6 counties in 1950 was 3,141.

TABLE 5.

LOUISIANA

Source: 1950 census; 1959 Registration figures from Louisiana Secretary of State, published regularly

The total 1950 voting-age population of Louisiana was 1,587,145. Of this total, 1,105,861 were white and 481,284 were nonwhite. Thus nonwhites were 30.3 percent of the total voting-age population.

In 1959 the total number of registered voters in Louisiana was 961,192. Of this total, 828,686 were white and 132,506 were nonwhite. Thus nonwhites were 13.8 percent of all registered voters.

The number of nonwhites registered in 1959 represented 27.5 percent of the total 1950 population of voting-age nonwhites.

Louisiana has 64 parishes (i.e., counties). In 8 parishes, nonwhites were a majority of the 1950 voting-age population. In 4 of these no nonwhite was registered to vote in 1959.

Nonwhite Registration by Parishes

Percentage of Nonwhites Registered in 1959 (based on 1950 voting-age population figures):	Number of parishes
No nonwhites registered	*4
Some, but fewer than 5 percent	9
5 to 25 percent	18
25.1 to 50 percent	14
More than 50 percent	19
Total	64

*Nonwhite population of voting age in these 4 counties in 1950 was 20,330.

TABLE 6.

NORTH CAROLINA

Source: 1950 Census; 1958 registration figures from replies of official county boards of elections in 79 of North Carolina's 100 counties to questionnaire of Commission's State Advisory Committee

The total 1950 voting-age population of North Carolina was 2,311,081. Of this total, 1,761,330 were white and 549,751 were nonwhite. Thus nonwhites were 23.8 percent of the total voting-age population.

In 1958 the total registered voters in the 79 counties reporting was 1,547,822. Of this total, 1,389,831 were white and 157,991 were nonwhite. Thus nonwhites were 10.2 percent of all registered voters in these counties.

The number of nonwhites registered in 1958 in these 79 counties represented 28.7 percent of the State's total 1950 population of voting-age nonwhites.

North Carolina has 100 counties. In the 21 counties not reporting there were 111,475 voting-age nonwhites in 1950.

In six counties, nonwhites were a majority of the 1950 voting-age population. In at least four of these, some nonwhites were registered to vote in 1958. In two, the number of nonwhites registered was fewer than 5 percent of the county's 1950 voting-age nonwhite population. Two counties did not report.

Nonwhite Registration by Counties Reporting

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	0
Some, but fewer than 5 percent	3
5 to 25 percent	29
25.1 to 50 percent	18
More than 50 percent	29
Total	79

TABLE 7.

SOUTH CAROLINA

Source: 1950 census; 1958 registration figures released by Secretary of State of South Carolina as of May 10, 1958, published in *Columbia State,* May 25, 1958

The total 1950 voting-age population of South Carolina was 1,150,787. Of this total, 760,763 were white and 390,024 were nonwhite. Thus nonwhites were 33.9 percent of the total voting-age population.

In 1958 the total number of registered voters in South Carolina was 537,689. Of this total, 479,711 were white and 57,978 were nonwhite. Thus nonwhites were 10.8 percent of all registered voters.

The number of nonwhites registered in 1958 represented 14.9 percent of the total 1950 population of voting-age nonwhites.

South Carolina has 47 counties. In 15 counties, nonwhites were a majority of the 1950 voting-age population. In one of these counties, no nonwhite was registered to vote in 1958. In four of the other 14 counties, the number of nonwhites registered in 1958 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*1
Some, but fewer than 5 percent	6
5 to 25 percent	40
25.1 to 50 percent	0
More than 50 percent	0
Total	47

*Nonwhite population of voting age in this county in 1950 was 2,625.

TABLE 8.

VIRGINIA

Source: 1950 census; 1958 registration figures obtained from Virginia Secretary of State by the Commission's State Advisory Committee

The total 1950 voting-age population of Virginia was 2,036,468. Of this total, 1,606,669 were white and 429,799 were nonwhite. Thus nonwhites were 21.1 percent of the total voting-age population.

In 1958 the total number of registered voters in Virginia was 958,342. Of this total, 864,863 were white and 93,479 were nonwhite. Thus nonwhites were 9.8 percent of all registered voters.

The number of nonwhites registered in 1958 represented 21.7 percent of the total 1950 population of voting-age nonwhites.

Virginia has 100 counties.† In 8 counties, nonwhites were a majority of the 1950 voting-age population. In all of these counties some nonwhites were registered to vote in 1958.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*3
Some, but fewer than 5 percent	1
5 to 25 percent	67
25.1 to 50 percent	27
More than 50 percent	2
Total	100

*Nonwhite population of voting age in these three counties in 1950 was 910.
†There are in addition 34 "independent cities," figures on which are included in the Appendix.

Unofficial Figures

TABLE 9.

ALABAMA

Source: 1950 census; 1958 registration figures from survey by *The Birmingham News,* published February 17, 1959: "Some were official estimates, but most represent actual counts"

The total 1950 voting-age population of Alabama was 1,747,759. Of this total, 1,231,514 were white and 516,245 were nonwhite. Thus nonwhites were 29.5 percent of the total voting-age population.

In 1958 the known total of registered voters in Alabama was 902,218. Of this total, 828,946 were white and 73,272 were nonwhite. Thus nonwhites were 8.1 percent of all registered voters.

The number of nonwhites registered in 1958 represented 14.2 percent of the total 1950 population of voting-age nonwhites.

Alabama has 67 counties. In 12 counties, nonwhites were a majority of the 1950 voting-age population. In 2 of these counties, no nonwhite was registered to vote in 1958. In 7 of the other 10 counties, the number of nonwhites registered in 1958 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*2
Some, but fewer than 5 percent	12
5 to 25 percent	34
25.1 to 50 percent	9
More than 50 percent	10
Total	67

*Nonwhite population of voting age in these two counties in 1950 was 14,730.

Unofficial Figures

TABLE 10.

MISSISSIPPI

Source: 1950 census; and (1) Statewide figures from 1954 survey made by then Attorney General (now governor) James P. Coleman, Hearings House Judiciary Subcommittee, 85th Congress, 1st sess., 1957, pp. 736–739; (2) county figures from master's thesis, *Negro Voting in Mississippi,* by James Barnes, graduate student, University of Mississippi, 1955, based on interviews with officials and/or examination of county records. See also 103 *Congressional Record* 8602–03, June 10, 1957, pp. 7676–77, 85th Congress, 1st sess.; *State Times of Jackson* survey of Negro registration in 13 counties in fall of 1956, published Oct. 29–Nov. 1, 1956.

The total 1950 voting-age population of Mississippi was 1,208,063. Of this total, 710,709 were white and 497,354 were nonwhite. Thus nonwhites were 41 percent of the total voting-age population.

In 1954 the total of nonwhite registered voters in Mississippi was 22,000. White registration figures were unavailable.

The number of nonwhites registered in 1954 represented 3.89 percent of the total 1950 population of voting-age nonwhites.

Mississippi has 82 counties. In 26 counties, nonwhites were a majority of the 1950 voting-age population. In 6 of these counties, no nonwhite was registered to vote in 1955. In 18 of the other 20 counties, the number of nonwhites registered in 1955 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1955 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*14
Some, but fewer than 5 percent	49
5 to 25 percent	17
25.1 to 50 percent	2
More than 50 percent	0
Total	82

*Nonwhite population of voting age in these 14 counties in 1950 was 51,947.

Unofficial Figures

TABLE 11.

TEXAS

Source: 1950 census; registration figures from the Long News Service of Austin, which made actual counts on poll tax and exemption lists (equivalent of registration) in 165 of State's 254 counties, and for the remaining counties gave various kinds of estimates based on interviews with officials or on sampling.

The total 1950 voting-age population of Texas was 4,737,734 Of this total, 4,154,790 were white and 582,944 were nonwhite. Thus nonwhites were 12.3 percent of the total voting-age population.

In 1956–58 the known total registered voters in Texas was 1,716,336. Of this total, 1,489,841 were white (1956) and 226,495 were nonwhite (1958). Thus nonwhites were 13.5 percent of all registered voters.

The number of nonwhites registered in 1958 represented 38.8 percent of the total 1950 population of voting-age nonwhites.

Texas has 254 counties. In no counties were nonwhites a majority of the 1950 voting-age population.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*14
Some, but fewer than 5 percent	1
5 to 25 percent	59
25.1 to 50 percent	134
More than 50 percent	46
Total	254

*Nonwhite population of voting age in these counties in 1950 was 42.

The available statistical breakdown for each county or parish in the above States is printed in the Appendix of this report. There it will be seen that Negroes are registered in relatively large numbers and proportions in large Southern cities such as Atlanta (Fulton County, 28,414, or 29 percent of 1950 Negro voting-age population), Miami (Dade County, 20,785 or 49 percent), and New Orleans (Orleans Parish, 31,563 or 28 percent). Also Negroes are generally registered in fairly high proportions where they constitute a low percentage of the population. Most of the counties where fewer than five percent of the Negroes or no Negroes at all are registered are in rural areas where Negroes constitute a large proportion of the population. Most of these are among the 158 counties in 11 Southern States with 50 percent or more Negroes in 1950. (See the map on p. 53.) Some, however, contain no Negroes at all.

But this only raises the question as to the cause of the racial disparity. Why are so few Negroes in some areas registered?

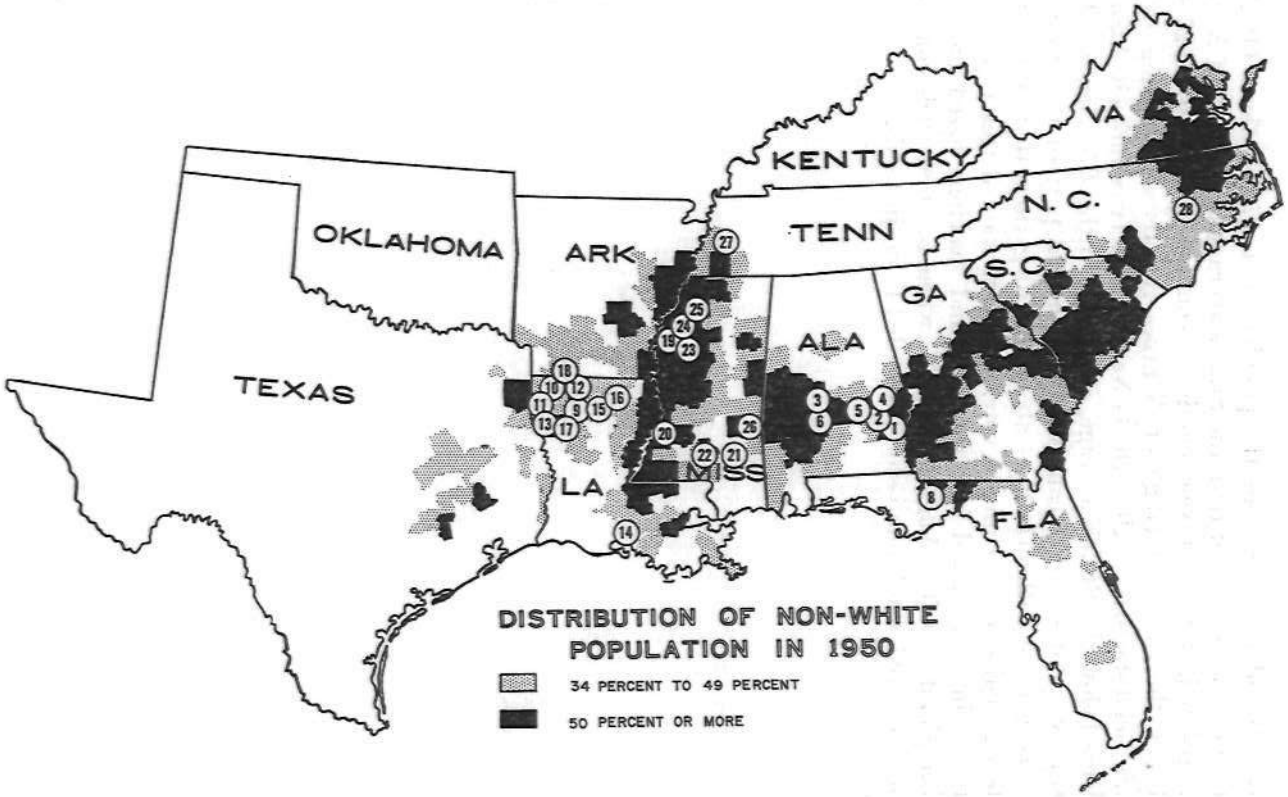
Apathy is part of the answer. In Atlanta, from all accounts, Negroes can register freely and 29 percent have done so, but 44 percent of the whites have registered. Similarly, in New Orleans Parish, some 28 percent of the Negroes are registered, compared with 60 percent of the whites. It may be that a lesser proportion of Negroes than of whites are registered in Northern and Western States. Gallup polls indicate that outside the South the voting turnout of Negroes is less than that of whites; according to the Gallup surveys an average of 53 percent of Negroes voted in the four national elections from 1948 to 1954, compared with a white average of 61 percent. Such apathy may stem from lack of economic, educational, or other opportunities, but it does not constitute a denial of the right to vote.

However, some of the statistics on their face suggest something more than apathy. The figures showing 16 counties where Negroes constituted a majority of the voting-age population in 1950 but where not a single Negro was registered at last report, and showing 49 other Negro-majority counties with a few but less than five percent of voting-age Negroes registered, indicate something more than the lower status and level of achievement of the rural Southern Negro.[1] In the six States with official racial registration statistics—Arkansas, Florida, Georgia, Louisiana, South Carolina, and Virginia—Negroes

[1] Counties with Negro majorities in 1950 but no Negroes registered at last report:
From official reports (same sources as for above tables):
GEORGIA—Baker and Webster Counties.
LOUISIANA—East Carroll, Madison, Tensas, and West Feliciana Parishes.
SOUTH CAROLINA—McCormick County.
From unofficial reports (same sources as for above tables):
ALABAMA—Lowndes and Wilcox Counties.
MISSISSIPPI—Carroll, Issaquena, Jefferson, Noxubee, Tallahatchie, and Tate Counties.
TENNESSEE—Haywood County.

CHART III

ALABAMA
① Barbour
② Bullock
③ Dallas
④ Macon
⑤ Montgomery
⑥ Wilcox
FLORIDA
⑧ Gadsden
LOUISIANA
⑨ Bienville
⑩ Bossier
⑪ Caddo
⑫ Claiborne
⑬ De Soto
⑭ Iberia
⑮ Jackson
⑯ Ouachita
⑰ Red River
⑱ Webster
MISSISSIPPI
⑲ Bolivar
⑳ Claiborne
㉑ Forrest
㉒ Jefferson Davis
㉓ Leflore
㉔ Sunflower
㉕ Tallahatchie
㉖ Clarke
TENNESSEE
㉗ Haywood
NORTH CAROLINA
㉘ Greene



constituted a majority of the population in 97 counties. Of these counties, 75 had fewer than the State's average proportion of Negroes registered. Of the 31 Negro-majority counties in Mississippi, 27 were below the State's average of Negroes registered according to the unofficial statistics. All of the 14 Negro-majority counties in Alabama were below the State's average, according to the *Birmingham News* survey. But statistics cannot tell the crucial part of the story.

To get the authentic facts about the allegations that Negroes are being denied their right to vote, Congress wanted this Commission to conduct first-hand investigations and hearings based on sworn complaints. After August 14, 1958, when the first such complaint was received, the Commission proceeded to do just this.

CHAPTER IV. DENIALS OF THE RIGHT TO VOTE

After its 5-month wait, the Commission received its first sworn voting complaint, alleging "that through threats of bodily harm and losing of jobs, and other means, Negro residents of Gadsden County, Fla., are being deprived of their right to vote." [1]

After the Commission promptly undertook a field investigation of this complaint, additional complaints began to come in from other States. Between August 1958 and August 1959, voting complaints were received involving 29 counties in eight States.[2]

The Commission unanimously decided upon full investigations of all these complaints. The situations disclosed by these investigations, by the public hearing in Alabama described in the next chapter and by the full preparations for a hearing in Louisiana described in the chapter after that, suggest some of the reasons why complaints were slow in coming to the Commission.

The same factors that discourage or prevent Negroes from registering to vote, including in some places the fear of bodily harm and loss of jobs, work against the filing of sworn complaints by those same Negroes. A few summary facts about the counties from which complaints did come will indicate that Negroes in these areas generally lack the economic and social status to be truly independent of community pressure.

It has been asserted that the "typical county in which Negroes are disfranchised is a rural county in the old plantation belt where large landholdings and farming are the major way of life, where there is little or no industry, farm tenancy is high, years of educational achievement low, and per capita income low. The percentage of Negroes in the population is high, 50 percent or more." [3]

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[1] Commission Docket No. 58–22–V.

[2] The designated number of complaints were received from the following counties or parishes: Florida—Gadsden (9); Alabama—Barbour (1); Bullock (3); Dallas (19); Macon (47); Montgomery (29); Wilcox (2); Mississippi—Bolivar (3); Claiborne (5); Forrest (10); Jefferson Davis (13); Leflore (1); Sunflower (3); Tallahatchie (1); Louisiana—Bienville (8); Bossier (9); Caddo (8); Claiborne (7); De Soto (11); Iberia (6); Jackson (2); Ouachita (1); Red River (9); Webster (25); New York—Bronx (3); Tennessee—Haywood (1); Oklahoma—Oklahoma County (3); North Carolina—(1). The most substantial of these complaints are discussed in the following chapters of this report. The North Carolina complaint is just now being processed. There were additional complaints from Clarke County, Miss., which are discussed below.

[3] Harold Fleming, "Negro Registration and Voting," a paper delivered as part of a symposium at Fisk University, and reproduced in "Human Relations and the Moral Challenge," 15th Annual Institute of Race Relations 27, 29 (1958).

For 15 of the first 25 southern counties from which complaints were received, including 5 of those involved in the Alabama hearing, that description is accurate. Statistical data concerning these counties will be found in the appendix of this report.

Complaints were received from only two counties whose percentage of nonwhite population was less than the statewide percentage.[4] In general, the median family income was generally lower than in the State as a whole. In all cases, income was conspicuously below the national median of $3,073 per year. The percentage of urban concentration was below the national average of 64 percent in all but four counties.[5]

In all but three of the counties [6] the number of school years completed by persons aged 25 or over was at or below the national median of 9.3. Uniformly, the complaints came from counties in which the percentage of dwellings with more than 1.01 persons per room exceeded the national average of 15.7 percent. The minimum excess over the national average was in Forrest County, Miss. (18.6 percent). The maximum differential was found in Bolivar County, Miss., where 60.6 percent of dwellings fell within this rough measure of overcrowding.

Significantly, the largest number of complaints from any single county, 44, came from Macon County, Ala., where many Negroes have achieved greater independence because of a considerably higher level of education and income. The relatively few complaints from counties where Negroes constitute a majority but where none is registered may be some measure of the lack of independence as well as the apathy of the Negroes in those areas.

A report follows on the results of the main voting investigations conducted by the Commission and the pertinent facts collected in states other than Alabama and Louisiana (which are discussed in later chapters).

FLORIDA

The first sworn complaint asserted that Negroes in Gadsden County, particularly Negro "ministers and teachers," had "deep fear" and that some of them had been "warned against voting." [7] Gadsden County, in northern Florida on the Georgia border, is one of only five out of the State's 67 counties, in which, according to official 1958 State statistics, less than 5 percent of the voting age Negroes were

[4] Jackson Parish, La.; Forrest County, Miss.

[5] Montgomery County, Ala.; Caddo Parish, La.; Ouachita Parish, La.; Forrest County, Miss.

[6] Montgomery County, Ala. (9.5); Forrest County, Miss. (9.9); Caddo Parish, La. (9.3).

[7] Commission Docket No. 58–22–V.

registered. In the State at large, approximately 40 percent of Negroes over 21 were registered, and in 19 counties more than 50 percent of such Negroes were registered. Dade and Duval Counties, where Miami and Jacksonville are located, with about 50 percent of voting age Negroes registered, together accounted for nearly 50,000 of Florida's nearly 150,000 registered Negroes. But in three other rural counties near Gadsden—Lafayette, Liberty and Union—no Negroes were registered.

In Gadsden, according to the official figures, only 7 Negroes were registered in 1958, although 10,930 adult Negroes lived there in 1950.[8]

Official State statistics also show that a significant increase in Negro registrants occurred in Gadsden County from 1946 when the total was 32 to the years 1948 and 1950 when it rose to 137 and 140. Then in 1952 it dropped to 6, at which level it has remained with only slight fluctuations.

Field investigations revealed that the persons responsible for the registration drive in 1948–50 are no longer in Gadsden County. One of the leaders, who was fired from a good job and allegedly threatened with physical violence, left the State altogether.

The following additional information, based on staff interviews, can be reported.[9]

There are about 300 Negro teachers in the county, many of whom have expressed a desire to vote, but virtually none of whom is registered. They are unwilling to attempt to register because of the fear of losing their jobs or other economic reprisals.[10]

Affidavits and other statements from Gadsden County residents cited instances of what they believed to be economic reprisal. One Negro minister was allegedly denied a $100 loan at a bank, despite the fact that he had a highly solvent cosigner. He had previously suggested from the pulpit that Negroes should register and vote.[11]

A teacher was denied renewal of a teaching contract in the county schools. The alleged reason was the teacher's liberal attitude generally toward voting rights and other constitutional matters discussed in a course in social studies.[12]

One elderly Negro who was interviewed said that he had registered about 3 years before but had decided not to vote. When asked

[8] *Bureau of the Census, Population Bulletin, P–B 10.*

[9] Names of individuals are withheld because almost without exception they demanded the assurance of anonymity as a condition precedent to talking with the interviewer.

[10] Commission field notes.

[11] *Ibid.*

[12] *Ibid.*

why he did not go to the polls, he said, "I am too old to be beaten up." [13]

A businessman refused to be interviewed because he said, "They would bomb my [business] out of existence if I even talked with you." [14]

It is significant that fears of reprisal are so widespread—even if they be groundless. Whether the reprisals would be carried out or not, if prospective registrants *believe* they would be, the fear is a real deterrent to registration.

MISSISSIPPI

In 1950 the Negro population of some 990,000 comprised about 45 percent of the State's population.[15] According to a survey made by Gov. James P. Coleman when he was the State's attorney general, some 22,000 Negroes were registered to vote in 1954, or about 4 percent of the 1950 voting-age Negroes. Governor Coleman added that only 8,000 of these paid their poll tax and were eligible to vote in 1955.[16]

Racial disparities in voting appear to be wider in Mississippi than in any other State. According to the county-by-county survey [17] by a University of Mississippi graduate student referred to in the preceding chapter, there were 14 Mississippi counties with a total 1950 population of about 230,000, of whom 109,000 were Negroes, where not a single Negro was registered in 1955.[18] In six of these counties Negroes constituted a majority of the population in 1950. In exactly half of the State's 82 counties fewer than 1 percent of voting-age Negroes were registered; [19] in 63 counties fewer than 5 percent; in 73 counties fewer than 10 percent.[20]

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[13] *Ibid.*

[14] *Ibid.*

[15] *Bureau of the Census, Population Bulletin, P–B 24.*

[16] Testimony of Gov. James P. Coleman. Hearings before Subcommittee No. 5, House Judiciary Committee, 85th Cong., 1st Sess., 1957, pp. 736–39. See also 103 Cong. Rec. 8602–03 (June 10, 1957). Gov. Coleman estimated that in the 1955 primary there were 7,000 Negro voters and 411,000 white.

[17] Registration figures from James F. Barnes, "Negro Voters in Mississippi," an unpublished manuscript submitted as a master's thesis at the University of Mississippi, 1955. Hereinafter cited as "Barnes."

[18] Carroll, Chickasaw, Clarke, George, Issaquena, Jefferson, Lamar, Montgomery, Noxubee, Pearl River, Tallahatchie, Tate, Walthall, Wayne; see footnote 17, *supra.*

[19] Amite, Attala, Calhoun, Clay, Copiah, De Soto (one Negro registered out of 8,013 over age 21), Forrest, Grenada, Holmes, Humphreys, Jasper, Kemper, Marshall, Monroe, Neshoba, Panola, Rankin, Scott, Sharkey, Smith, Sunflower, Tunica, Webster, Wilkinson, Winston, Yalobusha, Yazoo. These are in addition to those listed in note 18 *supra;* see footnote 17 *supra.*

[20] Barnes, see footnote 17, *supra.*

In the survey of 13 counties conducted in the fall of 1956 by the *State Times* of Jackson, Miss., a leading white newspaper, 4 counties were found to have the same number of registered Negroes as found the year before by the university investigator; in 7 the number was slightly greater; in 2 it was smaller.[21]

In view of these statistics, of the serious allegations made about denials of the right to vote in Mississippi in congressional hearings in recent years, and of the complaints received by this Commission from seven Mississippi counties, it is particularly unfortunate that the State's racial voting figures are fragmentary and unofficial. The Commission's firsthand investigations in 8 counties demonstrated the need for the full facts on voting throughout the State.

Six[22] of the eight counties from which complaints were received had more than 50 percent Negro population in 1950.[23] Commission investigators interviewed all complainants and numerous other Mississippi citizens. The following summaries were derived from those interviews and from submitted affidavits, along with 1950 census figures and 1955 registration estimates.

Bolivar County (69 percent Negro; 21,805 voting-age Negroes; 511 registered)[24]

Negro residents stated that they were given application blanks by the registrar, and that they were directed to write a section of the constitution of Mississippi. Further, they were directed to write "a reasonable interpretation" of the section which they had written.[25] Uniformly, the applicants were refused registration because they were advised, "Your replies won't do."[26]

One Negro reported that in 1956 he received, along with other tax bills, a poll tax bill. Until 1956, he had paid poll taxes. When he presented the bills for payment at the office of the deputy sheriff, he was asked by the deputy why he wanted to pay the poll tax, and replied that he wanted to register and vote. Thereupon, he said, the deputy threw the poll tax bill into the waste basket and accepted the money for the other taxes due. The next year, he related, the same disposal of the poll tax bill was made by the same deputy, who again told him to "pay the others." In 1958 the Negro says he did not receive a poll tax bill.

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[21] Survey by *The State Times* of Jackson, Miss., Oct. 29–Nov. 1, 1956.

[22] Bolivar (68.5), Claiborne (74.8), Jefferson Davis (55.5), Leflore (68.2), Sunflower (68.1), and Tallahatchie (63.7).

[23] *Bureau of the Census, Population Bulletin, P–B 24.*

[24] Barnes, see footnote 17, *supra.*

[25] Commission field notes.

[26] *Ibid.*

Sunflower County (68 percent Negro; 18,949 voting-age Negroes; 114 registered)[27]

Negro citizens stated that, when they tried to register, they were turned away. Some were told to come back because registrations were being "held up" while the legislature was "considering something." This "something" was presumably a proposed uniform policy of registration of Negroes which the Mississippi Legislature considered in early 1958.[28]

Tallahatchie County (64 percent Negro; 9,235 voting-age Negroes; no Negro registered)[29]

Negro citizens said that the sheriff's office refused to accept poll taxes from Negroes. They expressed fear of reprisals, and were reluctant to testify at all.[30]

A public school principal in Charleston, Miss., was discharged after attempting to register and became a farmer.[31]

Leflore County (68 percent Negro; 17,893 voting-age Negroes; 297 registered)[32]

One Negro Army veteran discharged as a technical sergeant, reported that he went to the courthouse and was asked by a female clerk what he wanted. "I want to register," he said. "To register for the Army?" she asked. When he assured her he wanted to register to vote, she told him she didn't have time because the court was meeting. She did, however, have him write his name and address on a slip of paper. Less than half an hour after his return home, two white men came to his door and asked him why he had tried to register. He replied that it was his duty. They told him that he was just trying to stir up trouble and advised him not to go back. He did return a week later, and again was told by the same clerk that she was busy. Fearful of reprisals, he stopped trying.[33]

Claiborne County (74 percent Negro; 4,728 voting-age Negroes; 111 registered) [33A]

Negroes in sworn affidavits stated that they had been registered voters until 1957 when their names were removed from the registration books. Their efforts to re-register have been unsuccessful.

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[27] Population figures from *Bureau of Census, Population Bulletin, P–B 24.* Registration figures from Barnes, see footnote 17 *supra.*

[28] Commission field notes.

[29] Same as footnote 27, *supra.*

[30] Commission field notes.

[31] *Ibid.*

[32] Same as footnote 27, *supra.*

[33] Commission field notes.

[33A] Same as footnote 27, *supra.*

Jefferson Davis County (55 percent Negro; 3,923 voting-age Negroes; 1,038 registered) [33B]

Most of the sworn complaints were filed by Negroes who were registered voters until 1956 when their names were removed from the registration books. Their efforts to re-register have been unsuccessful.

Forrest County (29 percent Negro; 7,406 voting-age Negroes; 16 registered) [34]

Forrest County, which has produced numerous voting complaints, has a relatively low Negro concentration, conspicuously high educational level, and significantly high average income level. The registrar who served for many years until his recent death was a staunch advocate of white supremacy and steadfastly refused to register Negroes.[35]

One Negro tried 16 times to register—twice a year for 8 years. Each time the registrar simply told him that he could not register. On the last occasion the citizen asked if there was any reason for this refusal. The registrar replied that there was no reason.[36]

Another citizen, a minister with two degrees from Columbia University, and a former registered voter in Lauderdale County, Miss. (1952–57) and in New York City (1945–48), attempted twice to register in Forrest County. The second time the citizen admitted he was a member of the National Association for the Advancement of Colored People. The clerk insisted that this was a communistic organization and said that the witness was "probably one of them." "That means you are not going to register me," said the witness. "You are correct," replied the clerk.[37]

Others stated that they had repeatedly tried separately and in groups to register, but that the registrar absented himself to avoid seeing them. Evasive answers were given by the registrar's employees as to the whereabouts of the registrar. One witness was told to "register at the Y.M.C.A."

While waiting for the registrar to return to his office, one Negro observed two white women being registered without question by the clerk who just previously had denied that she had the authority to register applicants.

Another Negro when attempting to register was asked a variety of questions including such things as "What is meant by due process of law?" "What is class assessment of land?" The registrar was not satisfied with the answers.

[33B] *Ibid.*
[34] *Ibid.*
[35] Commission field notes.
[36] *Ibid.*
[37] *Ibid.*

Several years ago a group of 15 Negro residents of Forrest County sought an injunction against the registrar on the ground that he had "misconstrued" section 244 of the Mississippi Constitution. This section provides that a voter shall "be able to read any section of the constitution of this state; *or* he shall be able to understand the same when read to him or give a reasonable interpretation thereof." [Italic added.] The registrar was charged with applying this section rigidly against Negro applicants but ignoring it as to white applicants.

A lower court dismissed the action without prejudice, but the court of appeals reversed with instruction to retain jurisdiction for a reasonable time until petitioners had exhausted their administrative remedies.[38]

Clarke County (41 percent Negro; 3,849 voting-age Negroes; no Negro registered)[39]

Virtually everyone interviewed here told how the registrar had refused to register them by saying that they should "watch the papers and see how the mess in Little Rock and the mess in Washington worked out."[40]

TENNESSEE

No county-by-county racial voting statistics were available. A 1957 study by the Southern Regional Council reported that some 90,000 or about 28 percent of the Negroes were registered in 1956. This study concluded that in only three counties in west Tennessee—Haywood, Fayette, and Hardman—does intimidation pose a serious threat to Negro registration and that in most of the State Negroes can register freely.[41] A Tennessee delegate to the Commission's Conference of State Advisory Committees also reported that in three counties Negroes are not registered.

The Commission received complaints involving two of the above-named counties, as reported below.[42] These happen to be the two counties in the State with Negro majorities. It also investigated a complaint that Negroes were being denied the right to register and vote in Lauderdale County. The investigation revealed that the Lauderdale charge was without foundation. Local officials gave courteous cooperation and assistance to staff representatives who examined the Lauderdale County records and found that Negroes apparently register and vote as freely as whites.[43]

[38] Peay et al. v. Cox, Registrar, 190 F. 2d 123 (5th Cir. 1951), *cert. denied,* 342 U.S. 896 (1951).

[39] Same as footnote 27, *supra.*

[40] Commission field notes.

[41] Margaret Price, *The Negro Voter in the South,* Southern Regional Council, Atlanta, 1957.

[42] Haywood County, Fayette County.

[43] Commission field notes.

Haywood County[44] (61 percent Negro; 7,921 voting-age Negroes; no Negroes registered)

In early 1959 a resident of Haywood County filed an affidavit with the Commission stating that the county election commission had refused to register him because he is a Negro. He had a master's degree and had taught school in the county.

He stated that in June 1958 he attempted to register but was told by an employee in the registration office that the proper person to see was out and the time of her return uncertain. When the affiant returned several days later he was referred to the sheriff or county clerk. When the affiant presented a registration card from Decatur County (where he had lived the year before), the county clerk told him to go back to Decatur because "we have never registered any here." The affiant understood this to mean that no Negroes were registered in Haywood County.

The chairman of the Haywood County Election Commission made an appointment with the affiant but failed to keep it. Later, when the affiant did see him, it was too late to register and vote at the next election. The affiant was unable to discover when the registration book would be open.

When a representative of the Civil Rights Commission made inquiries, he was advised not to go to the home of the affiant because it might get him in trouble. Consequently, the representative met with the affiant and five other Negroes in Brownsville, Tenn.[45]

It appears that Negroes have not been permitted to register and vote in Haywood County for approximately 50 years. Representatives of this Commission were told that Negroes in the county own more land and pay more taxes than white persons but that their rights are sharply limited: They must observe a strict curfew. They are not permitted to dance or to drink beer. They are not allowed near the courthouse unless on business.[46]

Commission representatives interviewed several public officials in Haywood County. They discovered that of the three members of the county election commission, one had died, one had resigned, and the certificate of appointment of the member who was still serving had expired approximately 3 weeks previously. The registration clerk had resigned in October 1958 and had not been replaced. Consequently, there was no one legally authorized to register voters.[47]

Some white persons interviewed said that Negroes had never registered and were satisfied with the status quo. A few officials denied

[44] *Bureau of the Census, Population Bulletin P–B42,* and Commission field investigation.
[45] Commission field notes.
[46] *Ibid.*
[47] *Ibid.*

that there would be any obstacles to Negroes' registering but said the Negroes did not want to vote. Some said they were not sure what would happen if Negroes attempted to register.[48]

According to an Associated Press dispatch in *The New York Times* on July 29, 1959, a delegation of Negroes led by a Memphis lawyer protested to the State Election Commission that "No Negro has voted in Haywood County since Reconstruction." The State Election Commission Chairman, it was reported, stated that he would look into the complaint "and do something about it."

Fayette County (70 percent Negro; 8,990 voting-age Negroes; 58 registered) [49]

Unlike Haywood County, there are a few Negroes registered in next-door Fayette County. But the experience of 12 Negro war veterans who registered there in the fall of 1958 further discouraged Negroes in Haywood.

Some of these Negro veterans were interviewed by Commission representatives. They stated that they had been subject to so much intimidation that only 1 of the 12 actually voted and he doubted that his ballot was counted for he thought he had handed it to someone instead of dropping it in the box. Two others who went to the polls were said to have been frightened away when two sheriff's deputies approached them. One was told by his banker that something might happen to him if he tried to vote. One of the twelve who was in the hauling business, lost all of his customers and the police threatened to arrest any of his drivers found on the highway in his trucks.[50]

According to men interviewed, when a Negro registers the sheriff is quickly informed and he, in turn, informs the Negro's landlord and employer. Those who register are soon discharged from their positions and ordered to move from their homes. The police arrest them and impose severe fines—as much as $65 on minor charges, it was alleged. They are unable to get credit. Their wages are garnisheed. Applications for GI loans to buy land are turned down by local lenders.[51]

Most of these allegations have not been verified as yet. An examination of the county voting records revealed that 58 Negroes had registered; that 20 of these had registered in 1958 and 11 in 1959. Voting records found for 46 of the 58 Negro registrants showed that only 1 of them had voted in 1958, 12 in 1956, 1 in 1953, and 3 in 1952. Of the 46, 13 had never voted and 16 had registered after the 1958 election, so had had no opportunity to vote.[52]

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[48] *Ibid.*
[49] Note 44 *supra.*
[50] Commission field notes.
[51] *Ibid.*
[52] *Ibid.*

Under Tennessee law, any registered voter who fails to vote during 4 consecutive calendar years has his registration canceled and must reregister. If, because of fear of reprisals, most of the Negroes who have registered fail to vote, as appears to be happening, after 4 years their registration is invalid.

NORTH CAROLINA

No official county-by-county racial voting statistics were available when the Commission's State Advisory Committee undertook to collect them. Signed replies to questionnaires from the State Committee were received from boards of elections in 79 of the State's 100 counties. They showed in 36 counties a substantial increase in Negro registration in 1958 over the estimate made by the Southern Regional Council in 1956; in 10 counties there was a small decline; and in a number of others the figures were the first estimates of Negro voting available.

The Chairman of the North Carolina Advisory Committee, Mr. McNeill Smith, says that publication of these registration statistics "is going to do a great deal to encourage Negroes to register who may have assumed falsely from national publicity that they couldn't."

While the report of the State Advisory Committee stressed that in some cases the figures reported by the county registrars were rough estimates and that some counties had not "purged their registration books for twenty years so that the registration figures include a good many residents of the counties' graveyards," it noted the "considerable disparity" in white and nonwhite registration. On the basis of the first 65 counties submitting statistics, the State Committee reported:

> In 34 of the reporting counties less than 30 percent of the Negroes of voting age are registered to vote. Less than 30 percent of the whites are registered in only 2 counties. In 54 . . . more than 70 percent of the whites are registered. The same relatively high degree of registration among Negroes is found in only 12 counties.

The State Committee reported further that "low Negro registration corresponds to the areas of greatest Negro concentration in the State."

The problem in North Carolina appears to be largely that of varying practices in administering the State's literacy requirement. Would-be voters must be able to "read and write" any section of the constitution to the satisfaction of the registrar, who may have the applicant copy indicated sections or may dictate any section he chooses. The Southern Regional Council study reports that under this broad discretion, in which a Negro's ability to vote depends on the individual registrar's sense of justice, "Negroes may find it almost impossible to qualify in one county and comparatively easy in the next." [53]

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[53] Margaret Price, *op. cit. supra* note 41, at 10.

The Chairman of the North Carolina State Advisory Committee notes that some persons feel that the literacy test "is applied unfairly in some of the eastern counties," although the committtee had no evidence of this. The State committee has since then received one voting complaint making just this allegation. The complaint was from Greene County, one of the eastern counties that did not report its registration statistics to the State Committee. The Committee has forwarded the complaint to the Commission, but it has just begun to be processed.

GEORGIA

County-by-county racial registration statistics, supplied by Georgia's Secretary of State, show that, as the Commission's Georgia State Advisory Committee reported, "the range of voting conditions and the degree of minority participation in elections varies widely." According to these official statistics, some 161,082 Negroes were registered in 1958, or about 26 percent of the State's Negroes over 18, the voting age in Georgia. The State Advisory Committee reports that this is an increase from some 125,000 Negroes registered in 1947, and that the increase is largely in urban areas where Negro voting is heaviest.[54]

In 27 of the State's 159 counties more than 50 percent of the voting-age Negroes were registered in 1958. But in Baker County, with some 1,800 Negroes of voting age, none was registered; in Lincoln County only 3 out of more than 1,500; in Miller, 6 out of more than 1,300; in Terrell, 48 out of 5,000. In 22 counties with sizable Negro populations, fewer than 5 percent were registered.

The Commission received no sworn complaints from Georgia, but in its Atlanta housing hearing it heard testimony about the relative success, noted above, of the drive to register Negro voters in Atlanta; about the correlation between this Negro vote and better housing conditions there; and about the contrasting voting and housing situation in rural Georgia counties. It received in evidence and published studies made of the degree of Negro voting in six such counties.[55]

The Commission's Georgia State Advisory Committee, while noting that "in few counties, the Negro votes with the same ease and freedom as the white citizen," stated that it "had access to reports on conditions in 15 or 20 counties where undoubtedly the Negro wishing to register or vote has met difficulties." [56] It listed some forms of discrimination faced by would-be Negro voters:

> In a few places, there is neither separation of voting boxes nor voting lines; however, in most places the white and Negro ballot boxes are readily identifiable.
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> * * *

[54] Commission's Georgia State Advisory Committee Report.
[55] Commission's regional housing hearings (Atlanta section).
[56] Commission's Georgia State Advisory Committee Report.

The 1958 session of the General Assembly passed a bill frankly designed to discourage Negro registrants. It poses 30 questions to the "illiterate voter," 20 of which must be answered correctly. Considerable discretion remains with the registrar in deciding who shall have to answer questions and whether the answers are correct. . . .

Laws requiring purging the names of voters who have failed to vote in the past two years are being applied throughout the state now. Those who fail to vote must seek re-instatement or must go through the entire registration procedure afresh. Here again there is room for the practice of local discrimination. . . .[57]

The Georgia Committee gave an example of a registrar's discretion. In Terrell County the chairman of the county board of registrars gave as grounds for denying registration to four Negro school teachers that in their reading test they "pronounced 'equity' as 'eequity,' and all had trouble with the word 'original.'" The chairman of the registrars said that he interpreted Georgia law to mean that applicants must "read so I can understand." [58]

The Georgia Advisory Committee concluded that, "While continued chipping away at discrimination may be expected in urban areas, subtle and sometimes not-so-subtle campaigns to reduce or discourage Negro voting in those counties with heavy colored populations may be expected." [59]

NEW YORK

Today, it is estimated some 618,000 American citizens who have migrated from the island Commonwealth of Puerto Rico live in New York City.[60] About 190,000 of these people have lived there long enough to satisfy the State's residence requirements for voting.[61] But many of them are not permitted to vote because they cannot pass the New York State literacy test which provides that ". . . no person shall become entitled to vote . . . unless such person is also able, except for physical disability, to read and write English." [62]

Approximately 59 percent of the Puerto Rican residents of New York read and write only Spanish; they are served by three Spanish-language newspapers having a combined daily circulation of 82,000.[63] One such person, Jose Camacho, a resident of Bronx County, N.Y., filed a suit against the election officials in his home county seeking registration to vote; he also filed a formal complaint with the Commission on Civil Rights. Camacho's petition was denied by the Su-

[57] *Ibid.*

[58] *Ibid.*

[59] Commission's Georgia State Advisory Committee Report.

[60] Commission's regional housing hearings, pp. 147–48, 152.

[61] One year in the State, and 4 months in the county, city, or village, and 30 days in the election district, preceding the election, are required.

[62] Constitution of the State of New York, art. II, sec. 1. This provision was inserted by a constitutional amendment effective Jan. 1, 1922.

[63] From a recent survey, which also disclosed that 14 percent are literate in both Spanish and English, 14 percent in English alone, and the rest claim no reading habits even though the majority of them assert their literacy in Spanish.

preme Court of Bronx County, and at this writing was pending before the New York Court of Appeals.[64]

Camacho's contention is that denial of the right to vote because he and others similarly situated are not literate in the English language constitutes a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment. Fundamentally, his case rests upon provisions of the Treaty of Paris, by which war with Spain was concluded and Puerto Rico ceded to the United States. This treaty provided that the civil rights of the native inhabitants should be fixed by the Congress, but left to the inhabitants the choice of adopting English or retaining Spanish as their official language.[65] The Congress gave all inhabitants of Puerto Rico full American citizenship in 1917. The people chose Spanish as their language. But the United States Supreme Court has ruled that, "The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue." [66]

Unlike the other voting complaints, that of Mr. Camacho raises legal rather than factual issues, and Mr. Camacho has filed a counterpart case in the courts. This Commission regards the courts as the proper tribunals for determination of legal issues. However, this Commission has found that Puerto Rican-American citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York.

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[64] Only one similar case in New York appears in the law reports; it was decided before the 1922 constitutional amendments and before the Congress granted American citizenship to inhabitants of Puerto Rico. In that case, too, a native of Puerto Rico sought to vote in New York. He had served with the U.S. Army of Occupation on the island, and had moved to New York in 1899; he claimed never to have declared allegiance to Spain, but to have "adopted" the nationality of the United States. The opinion in this case refers to both art. VI, sec. 3, and the fourteenth amendment of the Constitution of the United States. In denying the claim, reliance is put upon Elk v. Wilkins, 112 U.S. 94, which delineated the individual and collective methods of naturalization of citizens. Collective naturalization is "as by the force of a treaty by which foreign territory is acquired." The Court quotes from the Treaty of Paris, Dec. 10, 1898, by which Puerto Rico was ceded to the United States (sec. 9): "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." The Court concluded: "As the Congress had not then acted to provide collective naturalization and as there was no claim of citizenship by reason of birth or individual naturalization, the petitioner was denied registraton as a voter." People ex rel. Juarbe v. Board of Inspectors, 67 N.Y.S. 236 (Sup. Ct. 1900).

[65] It is interesting to note the bilingual character of many of the documents pertaining to the establishment of the Commonwealth of Puerto Rico—e.g., Resolutions 22 and 23, Constitutional Convention of Puerto Rico, Laws of Puerto Rico, Ann., pp. 129–131—and their approval in Public Law 447, 82d Cong., *ibid.*, pp. 132–134.

[66] Meyer v. State of Nebraska, 262 U.S. 390, 401 (1923); compare Farrington v. T. Tokushige, 273 U.S. 284 (1927), where it is said, "The Japanese parent has the right to direct the education of his own child without unreasonable restrictions; the Constitution protects him as well as those who speak another tongue."

Chapter V. THE ALABAMA HEARING

On September 8, 1958, the Commission on Civil Rights received its first sworn complaints from American citizens who alleged that they themselves had been denied the right to vote because of race or color.[1] The 14 affidavits were contained in a letter from William P. Mitchell, of Tuskegee, Ala., secretary of the Tuskegee Civic Association and chairman of its Voter Franchise Committee.

The complainants were Negro residents of Macon County and its chief town, Tuskegee, site of the famous college for Negroes founded by Booker T. Washington in 1881. They included teachers, housewives, students, farmers, and U.S. civil service employees at the Veterans' Administration hospital near Tuskegee.

Mr. Mitchell, though a Negro, was not among the complainants, for he himself was a registered elector of Macon County. But, before becoming a voter, he had been required to make three visits to the Macon County Board of Registrars, two appearances before a Federal trial court, two appeals to the Fifth Circuit Court, and one petition to the Supreme Court of the United States. His efforts extended over 3 years.

The original affidavits, found to be in proper form, were presented to the members of the Commission on September 9. The Commission unanimously decided that an investigation should be made in Alabama.

At this point the Commission established a basic policy to govern the conduct of its field investigations. The presence of Commission investigators in a State, and the nature of the investigation, would be made known to high State officials—if possible, the Governor and the Attorney General. Agents of the Commission would not seek out representatives of the public information media, but neither would they move about *sub rosa*. And under no circumstances would the names of complainants or any identifying details of the complaints be revealed.

The preliminary survey was conducted between September 25 and September 28, 1958, by the Director of the Commission's Office of Complaints, Information, and Survey, who called at the offices of Attorney General John Patterson, then the Democratic nominee for Governor of Alabama and so, in effect, the Governor-elect. McDonald Gallion, the Democratic nominee for Attorney General, also was informed that the investigation had begun.

At no time have Commission representatives solicited voting complaints, in Alabama or elsewhere. However, during the preliminary survey in Alabama, 13 persons—all Negroes—sought out the Commis-

[1] These complaints differed from the one filed earlier in Florida (Chapter IV, Voting) in that the affidavits were filed on behalf of the complainants themselves.

sion's agent and asked that they be allowed to tell of the failure of their efforts to register. All affirmed that they had been denied registration because of their race or color. These Macon County Negroes subsequently mailed voting complaints to the Commission's offices in Washington.

All complainants were warned of the possibility of a Commission hearing at which they might be asked to testify under oath. Would they, a longtime Negro resident of Tuskegee was asked, be likely to lose their nerve at the last minute?

The answer was quick and emphatic: "These people would gladly tell their stories on the courthouse steps."

In Tuskegee, the Commission's Director of Complaints, Information, and Survey made arrangements with the chairman of the Macon County Board of Registrars for Commission agents to examine the county's voter registration records. The examination was set for Monday, October 20, 1958.

But when the Commission's agents arrived at the courthouse on the appointed date, the chairman of the Board of Registrars told them that, by order of Attorney General Patterson, the records would not be made available to the Commission on Civil Rights.

The Commission thus encountered the first official resistance to its attempt to carry out the task assigned to it by the Congress of the United States.

At its monthly meeting on October 22, the Commission voted unanimously to hold a hearing on the Alabama complaints. The hearing, in Montgomery, Ala., was set to begin December 8.

JUDGE WALLACE INTERVENES

Meanwhile, additional voting complaints had been received by the Commission from Negroes in other Alabama counties. The decision to file such an affidavit was seldom an easy one. Outside Macon County, which has a long history of Negro militancy, fear of possible discovery and resulting reprisals was frequently expressed. Because of mistrust of white notaries in Bullock County, for example, the formal complaints from that county were notarized in Macon County.

On October 28, Alabama Third Circuit Judge George C. Wallace of Clayton, Barbour County, where one complaint had originated, impounded the voter registration records of the county.

Commission subpenas calling for the production of records were addressed to officials in Barbour, Bullock, Dallas, Lowndes, Macon, and Wilcox Counties. Between November 28 and December 2, 5 staff representatives served 66 subpenas on complaining Negro witnesses and on white officials. Voting complaints had originated from all six counties except Lowndes, where the population was 82 percent nonwhite, but where not one Negro was registered to vote.

Montgomery County, where 20 complaints had originated, was not included. Shortly after it was announced that the Commission would hold hearings in Montgomery, the complainants and other Negroes began to receive certificates notifying them that they had been registered.[1a]

On November 21, Judge Wallace impounded the voter registration records of Bullock County, also in the Third Circuit. As in the case of Barbour County, he acted in response to a petition for a State grand-jury investigation. The petitions charged that unqualified voters had been registered in Barbour County by misrepresenting themselves to the Board of Registrars, and that others had attempted to register fraudulently in Bullock County. When served with a Commission subpena calling for the Barbour and Bullock registration records, Judge Wallace told the press: "They are not going to get the records. And if any agent of the Civil Rights Commission comes down here to get them, they will be locked up."[2] It was further reported that he had instructed the Barbour County sheriff to carry out this threat.[3]

By the time of the hearing, 91 legally sufficient complaints had been received from 6 Alabama counties alleging denial of the right to vote because of race or color. The counties were:

Barbour County	1
Bullock County	3
Dallas County	19
Macon County	46
Montgomery County	20
Wilcox County	2

All these complainants, plus about 25 other Negroes who had supplied background information or were otherwise potential witnesses, were interviewed at least once. Those who testified at the hearing were interviewed at least twice by different members of the staff. The accompanying map of Alabama shows the counties involved in the Commission's inquiry.

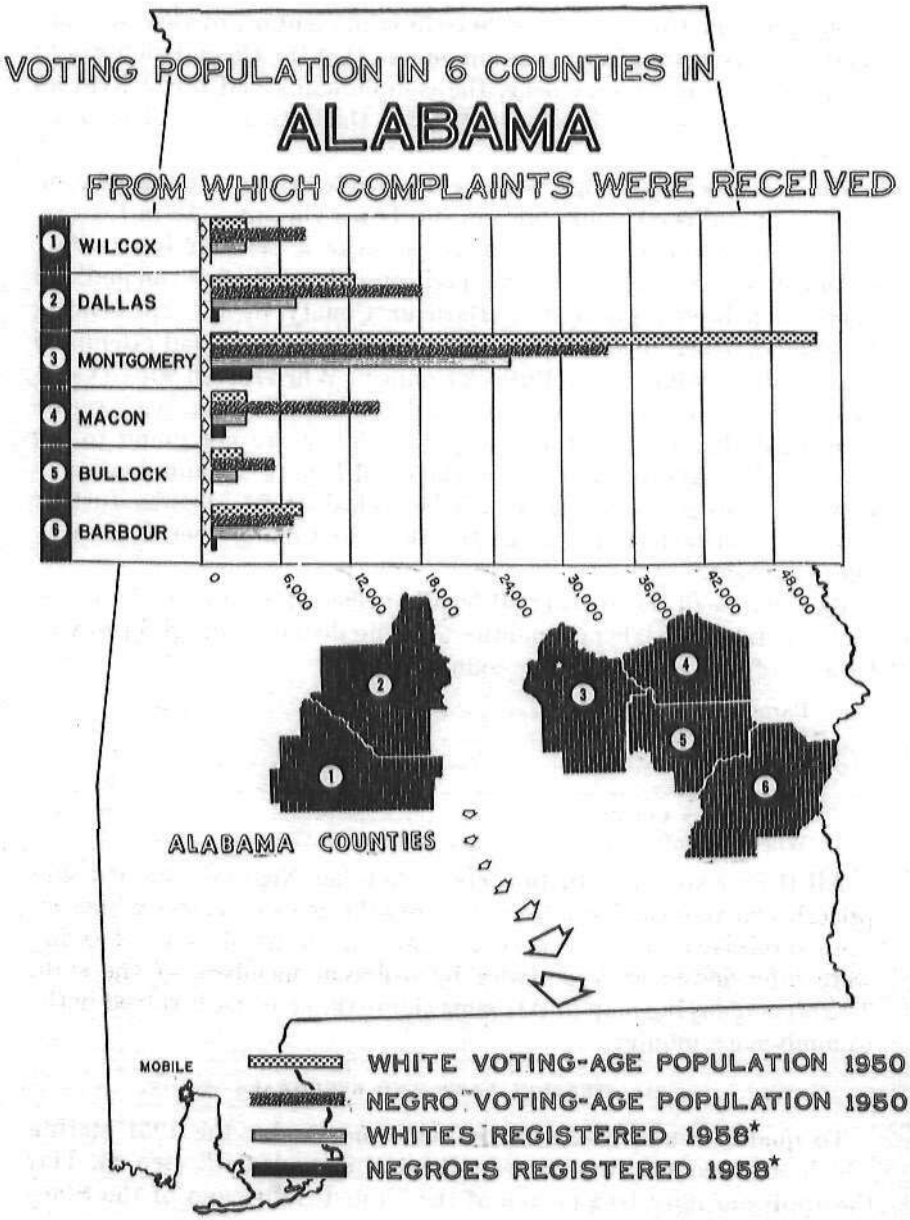
REGISTRATION LAWS AND REGISTRARS

To qualify for registration in Alabama, under the 1951 statute which replaced the invalidated "Boswell amendment" (see ch. II), the applicant must be a citizen of the United States and of the State

[1a] Montgomery County, site of the state capital, is 78.8 percent urban. J. E. Pierce, in his *Registration of Negro Voters in Alabama in 1954*, writes that 6.3 percent of Montgomery County Negroes over 21 years old were registered in 1954. The Southern Regional Council reported that the figure was 6.4 percent in 1956. The most reliable figures for 1958 show the figure had increased to 10.2 percent. In 1958, 49.2 percent of the white persons over 21 (based on the 1950 census) were registered in the county. Nonwhites comprise 43.6 percent of the county's population.

[2] The Associated Press, night report from Montgomery, Dec. 5, 1958.

[3] *The Montgomery Advertiser*, Dec. 6, 1958.



* REGISTRATION FIGURES FROM *BIRMINGHAM NEWS*, APRIL 20, 1958

CHART IV

of Alabama and at least 21 years old.[4] Residence requirements are 2 years in the state, 1 year in the county, and 3 months in the precinct or ward.[5] The applicant must be able to read and write any provision of the Constitution of the United States.[5A] He must be of "good character," and also must "embrace the duties and obligations of citizenship under the Constitution of the United States and under the constitution of the State of Alabama." [6] And the applicant must not be disqualified under a separate section of the State constitution which enumerates the Nation's most extensive list of voting disqualifications.[7] The applicant must complete, without assistance, the lengthy questionnaire that is reproduced in its entirety on the pages immediately following. There is no official set of correct answers to the questions.

Members of Boards of registrars are "constituted and declared to be judicial officers, to judicially determine if applicants to register have the qualifications" required, and the registrars are authorized to "receive information respecting the applicant and the truthfulness of any information furnished by him." [8]

The ambiguity of question 19 ("Will you give aid and comfort to the enemies of the U.S. Government or the government of the State of Alabama?") was demonstrated in the affirmative answer given by one person on an application examined by the Commission. This applicant was permitted to register, as was another white applicant who answered this question with "no unless necessary." Words in the questionnaire that might be difficult for persons with little formal education include "secular," "priority," "bona fide," and "moral turpitude."

[4] Ala. Code 1940, Const. sec. 177, as amended; Ala. Code 1940, title 17, sec. 12, as amended.

[5] Ala. Code 1940, Const. sec. 178, as amended. The 1953 amendment of title 17, sec. 12, does not coincide with the residence requirements prescribed by the State constitution. The periods stated in this statute are 1 year in the State and 6 months in the county. Investigation indicated that some boards were unaware of this conflict, and applied the statutory standards rather than those of the constitution. Because of the legal principle that constitutions are paramount to statutes, this Commission recognized the longer periods fixed by the State constitution.

[5A] See generally colloquy between Congressman George Huddleston, Jr., of Alabama and Senator Thomas C. Hennings, Jr., of Missouri. (*Hearings on Pending Civil Bills before a Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary,* 86th Cong. 1st Sess. (1959), pp. 770–71.)

[6] Ala. Code 1940, Const. sec. 181, as amended; title 17, sec. 32, as amended.

[7] Ala. Code 1940, Const. sec. 182, as amended; title 17, sec. 15. These provisions exclude all idiots and insane persons, those disqualified by reason of conviction of crime at the time the constitution of 1901 was ratified, and those who since that date have been convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining money or property under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, any crime punishable by imprisonment in penitentiary, any infamous crime or crimes involving moral turpitude, and also any person who since Nov. 29, 1901, has been or shall be convicted: as a vagrant or tramp, of selling or offering to sell his vote, of buying or offering to buy the vote of another, making or offering to make a false election return, suborning any witness or registrar to secure registration of any person as an elector.

[8] *Ibid.*

The applicant's memory is tested in the questionnaire by a requirement that he state under oath where he has lived, the name or names by which he has been known, and the name or names of those by whom he has been employed for 5 years preceding the time of application.[9] A refusal to disclose this information is ground for denying registration, and the willful making of a false statement constitutes perjury.[10] A conviction of perjury, in turn, itself constitutes ground for disqualification.[11]

Boards of registrars are authorized to make rules and regulations to expedite the registration process,[12] and such rules and regulations have the force and effect of law.[13] In every case, the burden of proof of meeting the registration requirements to the reasonable satisfaction of the board rests with the applicant.[14]

Alabama law prescribes no educational qualifications for members of boards of registrars. To be eligible, it is only necessary that one be a resident and an elector of the county, be "reputable," and not hold an elective public office.[15] Nominally, appointments are made by a board consisting of three elected State officials: the Governor, the auditor, and the commissioner of agriculture and industries. In practice, however, each names one of the three members to the board in each county on recommendation of the county's delegation to the State legislature.

Boards governed by general laws (boards in seven counties operate under special laws) meet on the first and third Monday in each month, 10 days in January, and 5 days in July. In odd-numbered years, they meet for an additional 30 days in October, November, and December. In even-numbered years, they meet for two 6-day weeks. Boards may not register voters in the 10 days immediately preceding any general, primary, or special election.[16] The irregular working days, plus pay of $10 a day, limit the field from which registrars may be drawn and make it difficult for persons employed full time to serve. There is no continuing supervision of the boards by the State, and each board applies the law according to its own interpretation and judgment without reference to the practices of other boards.[16A]

This, plus the allegations in 91 sworn affidavits, was the information the Commission had in hand as it met in Montgomery to hear both sides of the voting controversy in Alabama.

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[9] Ala. Code 1940, title 17, sec. 43, as amended.
[10] Ala. Code 1940, Const. sec. 188, as amended.
[11] Ala. Code 1940, title 17, sec. 15, as amended.
[12] Ala. Code 1940, title 17, sec. 53, as amended.
[13] Mitchell v. Wright, 69 F. Supp. 698 (M.D. Ala. 1947).
[14] Ala. Code 1940, title 17, sec. 33, as amended.
[15] Ala. Code 1940, title 17, sec. 21, as amended.
[16] Ala. Code 1940, title 17, secs. 26 and 27, as amended.
[16A] *Hearings on Pending Civil Rights Bills before a Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary,* 86th Cong., 1st Sess. (1959), p. 611 (testimony of John Patterson, Governor of Alabama).

THE MONTGOMERY HEARING

The hearing began at 9 a.m. on December 8, 1958, in the crowded Fifth Circuit courtroom in the Federal Building in Montgomery. Two dozen newsmen sat at the press tables, and four television cameras whirred quietly in the rear. In his opening statement, Chairman John A. Hannah explained the Commission's responsibility with respect to the investigation of voting complaints. He then emphasized four points that have been the guidelines of the Commission and its staff since its organization:

> The Commission is an independent agency in no manner connected, even administratively, with the Department of Justice.
>
> The Commission is a factfinding body possessing no enforcement powers.
>
> The Commission and its staff at all times stress the necessity for objectivity in their search for the facts in any matter before the Commission.
>
> The Commission is not a protagonist for one view or another.

As Vice Chairman Storey took the chair to conduct the hearing, he sounded a note of national unity. "My father was born in Alabama," he recalled, "reared here and educated before he emigrated to Texas. I have close relatives and many good friends in this State. My grandfathers were Confederate soldiers. So, there are many thoughts and memories going through my mind as we meet in Montgomery, the cradle of the Confederacy; but history moves on. We are one nation now. Hence, this bipartisan Commission, composed of two presidents of great universities and four lawyers, has a solemn duty to perform. We are sworn to uphold the Constitution of the United States." [17]

William P. Mitchell, of Macon County, who had forwarded the original complaints, was the first witness.[18] He supplied statistical information which closely paralleled that obtained by Commission staff research. The staff study showed that, in 1950, Macon County had a population of 30,561. Of these, 25,784 were nonwhite and 4,777 were white persons. But, the 1958 voter registration list (presumably after some rise in population) showed 3,102 white voters and only 1,218 Negro voters. Macon County ranks first in the State in the proportion of its Negroes aged 25 or over who have at least a high school education, and in the percentage of Negro residents who hold college degrees.

Macon County Negroes have brought numerous court actions to become registered. After one suit in 1946, all members of the board of registrars resigned and there was no publicly functioning board for

[17] *Hearings before the United States Commission on Civil Rights, Voting,* hearings held in Montgomery, Ala., U.S. Government Printing Office, Washington, D.C., 1959, p. 5.

[18] *Op. cit. supra* note 17, at 11–30.

about 18 months. A new board was formed in January 1948, but there was no public notice of its existence until about 4 months later, when the resignation of the then chairman became known. Once the news was out, scores of Negroes appeared at the courthouse in Tuskegee to apply for registration. But courthouse officials refused to tell the Negroes where they might find the board. Only after a very fair-complexioned Negro who could easily have been mistaken for a white person asked the directions was the information forthcoming. On that day, 18 Negroes applied for registration. The board did not function publicly again for 8 months. It again became inoperative for about 16 months in 1956–57.

Even when a board was functioning, Macon County Negroes had met formidable obstacles when they tried to register. Mr. Mitchell, in a statement submitted for the record, estimated that, at the current rate, it would take 203 years to register all of the county's unregistered adult Negroes.

One of the most effective deterrents to Negro voting found in Macon County was a requirement that an applicant for registration must be accompanied by a "voucher" who is a registered voter, and who must testify to the applicant's identity and qualifications. But a voter could vouch for only two applicants per year. In recent years, no white elector has vouched for a Negro applicant in Macon County.

The Macon County board required Negro and white applicants to use separate rooms. Negro complainants testified that, when seeking to register, they had been compelled to wait in line for 3 to 9 hours. Only two applicants at a time were admitted to the Negro room. They were usually required to copy lengthy provisions of the U.S. Constitution.

A Negro applicant must ordinarily supply a self-addressed envelope for notification of his acceptance, but the 25 unregistered Macon County Negroes who were witnesses at the Montgomery hearing testified unanimously that they had received no notification of either acceptance or rejection. Thus they were denied opportunity for a court appeal, which must be made within 30 days after notice of rejection.

Records compiled by Mr. Mitchell showed the experience of Negroes who had tried to register in the county thus:

TABLE 12.

Year	Applications taken	Certificates issued	Percent registered
1951	161	23	14
1952	225	52	23
1953	182	28	15
1954	456	167	37
1955	258	119	46
1956	23	8	35
1957	78	26	33
1958 (through Nov. 15)	202	87	43
Total	1,585	[1] 510	[1] 32

[1] Average.

Not content to hold the line against new Negro voters, the City of Tuskegee recently moved to decrease the number already voting in its elections. On July 15, 1957, the Alabama Legislature passed an act that gerrymandered the boundaries of the city.[19] The town limits, previously forming a rectangle, now became a figure of 28 sides. The new boundaries excluded all but 10 of the 420 Negroes who formerly voted in city elections. Another measure enacted later authorized a similar gerrymander or even total abolition of Macon County itself. The accompanying map shows the original city boundaries of Tuskegee and the new boundaries.

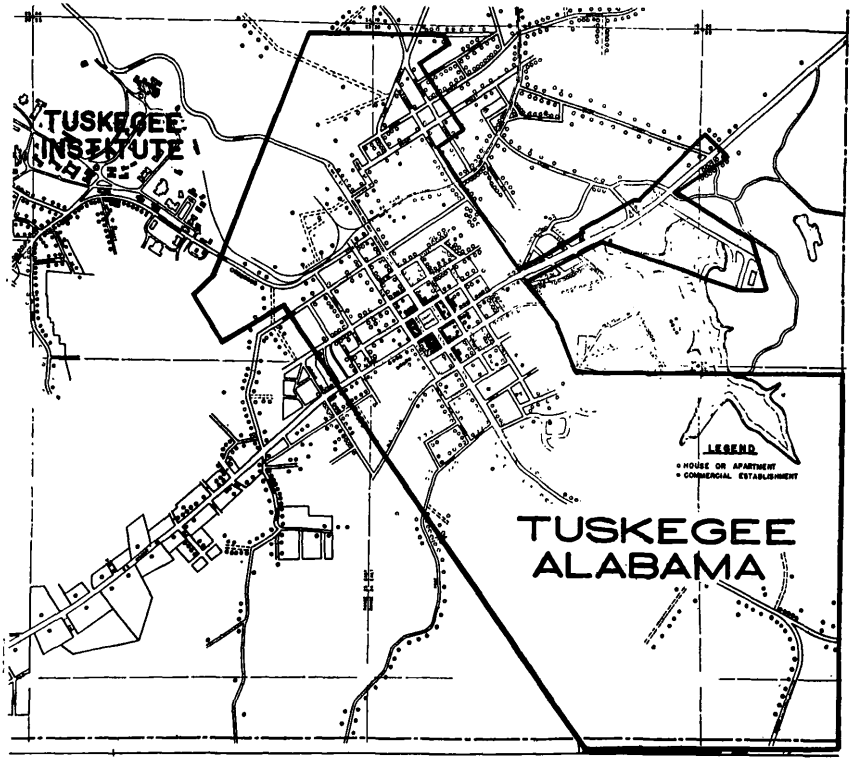

CHART V

Mr. Mitchell, in a statement submitted for the record, summed up the "tactics employed by the board which, we believe, are designed to keep Negro registration to a minimum":

1. The board's refusal to register Negroes in larger quarters.
2. Its failure to use the room which is assigned for the registration of Negroes to its fullest extent.
3. The board's requirement that only two Negroes can make applications simultaneously.

[19] Ala. Laws, 1957, No. 140, p. 185.

4. Its policy of registering whites and Negroes in separate rooms and in separate parts of the Macon County courthouse.
5. Its policy of permitting a Negro to vouch for only two applicants per year.
6. Its requirement that Negro applicants must read and copy long articles of the U.S. Constitution.
7. Its failure to take applications from Negroes on several regular registration days.
8. Its failure to issue certificates of registration to Negroes immediately upon proper completion of the application form. . . .

Thirty-three unregistered Negro witnesses from four Alabama counties added further details that morning and the next. A few of them had attempted to register only once; most of them had tried two or three times, some five or six, and one, about 10 times. Their stories were essentially the same.[20]

They would arrive at the courthouse very early on a registration day, often to find other Negroes waiting in line for the registration office to open at 9 o'clock. Usually, the wait was long—up to 9 hours—and often the applicant would have to return several times before even being admitted to the small room set aside for Negro applicants.

Aaron Sellers, owner of a 240-acre farm in Bullock County, told how boredom was once varied by intimidation. He and five other Negroes were waiting in line, he said, when they were approached by a white man who asked them what their "trouble" was. They told him they were waiting to register. To this, according to Mr. Sellers, the man retorted: "If I were you all—you all are citizens already. If I were you all, I would go on back home."

But the Negroes did not leave, and in a short time the man returned.

"You all still sitting here, are you?" he asked. Then: "Well I thought I told you all to get the hell out of here."

Some in the group were frightened, so all left.

After the long wait outside the registration room, the registration process itself might require from a half hour to more than 3 hours. One witness, who had finished 2 years of college study, testified that he needed 2½ to 3 hours to fill out the long, complicated questionnaire and otherwise complete his application. Another witness, a college graduate, told the Commission that in copying the part of the Constitution assigned to her, she filled 8½ pages.

Mrs. Marie Williams, college educated and a lifelong resident of Alabama, had made five attempts to register since July 3, 1957. On that date, she arrived at the courthouse at 8 a.m., got into the registration room at 2:30 p.m., but had to return the next morning to complete her application. When she again attempted to register in

[20] *Op. cit. supra* note 17, at 30–121, 227–81.

July 1958, she waited from 8 a.m. until 3 p.m. There were similar delays when she tried to register on two occasions in September 1958 and one time in November 1958. Each time she went through the entire process.

After self-addressing an envelope, there began another long and fruitless wait for an answer that never came. All except 6 of the 33 witnesses had returned after the first attempt and were required to repeat the entire process. And if the Negroes were insistent enough to take their plea to the courts, there was the possibility that the board would cease to operate, as it did for a year and a half in Bullock County. When the Bullock board did function again, the Negroes who had brought a successful action in Federal court still went unregistered.

The difficulties confronting Negroes who wish to vote in Dallas, Wilcox, and Lowndes Counties were described by Mrs. Amelia Platts Boynton, who had lived in Selma, Dallas County, about 30 years, and who was a registered voter.[21] As manager of a life insurance company, she had regularly traveled in Dallas, Lowndes, Macon, Montgomery, Perry, and Wilcox Counties for 19 years, and talked with many Negroes about registration and voting problems.

Mrs. Boynton testified that Dallas County had a population of "fifty-some-odd thousand," of which "there are around 18,000 Negroes above 21 years of age." Negroes outnumber whites by almost 2 to 1, but some 8,800 whites are registered, against only 125 Negroes. As Commissioner Wilkins noted, this is a ratio of almost 80 to 1. The disparity in Lowndes County is even greater. There were 2,154 whites and 8,054 Negroes over 21 in Lowndes County: more than 1,500 whites were registered, but not one Negro. Furthermore, Mrs. Boynton said, no Negro had ever sought to be registered "because of the economic pressure that has been brought already on some whom they thought were perhaps members of the NAACP years ago . . .".

Mrs. Boynton cited two cases of Negro retail merchants in Lowndes County who were refused service and deliveries by white wholesalers. Obstacles to securing or renewing mortgages, and the use of demand notes, also were cited as examples of "economic pressure" exerted upon Negroes.

Similarly, although she knew of some Negroes who had attempted to register, no Negroes are registered in Wilcox County. She testified that a Negro minister had been turned down by a Wilcox board member thus: "Well, now, you're all right. I could register you, but to register you means that I have to register other Negroes, and for that reason it's better not to register you."

[21] *Id.* at 213–22.

Mrs. Boynton's husband, S. W. Boynton, was next to testify. He, too, was a registered voter.[22] He corroborated his wife's testimony in all respects, except to note that the Dallas County Negro registration was 163, rather than 125, according to an April 1958 publication in the local newspaper.

"Over the past 5 years," he testified, "we've had over 800 Negroes to go to the board of registrars to get registered . . . I know some who have applied 30 times . . . and, to my best knowledge, we haven't had over 2 Negroes to qualify and receive their certificate of registration."

WHY DID THEY WANT TO VOTE?

Among the 33 Negro witnesses who testified that they had not been allowed to register were 10 college graduates, 6 of whom held doctorate degrees. Only 7 of the 33 had not completed high school; all were literate. Most of them were property owners and taxpayers. Some had voted in other States. Among them also were war veterans, including two who had been decorated, respectively, with four and five Bronze battle stars.

They expressed no doubt about why they had not been permitted to register. The reason was stated most memorably by a Macon County farmer with only 6 years of schooling:

> Well, I have never been arrested and always has been a law-abiding citizen; to the best of my opinion has no mental deficiency, and my mind couldn't fall on nothing but only, since I come up to these other requirements, that I was just a Negro. That's all.

And why did they want to vote?

Mrs. Bettye F. Henderson, of Tuskegee, who holds a bachelor of science degree, told the Commission:

> I want to vote because it is a right and privilege guaranteed us under the Constitution. It is a duty of citizens, and I have four children to whom I would like to be an example in performing that duty, and I want them to feel that they are growing up in a democracy where they will have the same rights and privileges as other American citizens.

Said the Rev. Kenneth L. Buford, a homeowner and holder of two college degrees:

> I would like to vote because it is a right that should be accorded me as a citizen of the United States. I feel that I cannot be a good citizen unless I do have the right to vote. I am a taxpayer and I feel that if I am denied the right to vote it represents taxation without representation.

The youngest witness, Miss Fidelia Joanne Adams, a bachelor of science who was working on her master's degree in organic chemistry, declared:

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[22] *Id.* at 222–27.

. . . The Government of the United States is based on the fact that the governed govern, and only as long as the people are able to express their opinion through voting will our country be able to remain the great power that it is.

Charles E. Miller, a veteran of the Korean war who lives in Tuskegee, offered this explanation:

. . . I have dodged bombs and almost gotten killed, and then come back and being denied to vote—I don't like it. I want to vote and I want to take part in this type of government. I have taken part in it when I was in service. I think I should take part in it when I am a civilian.

THE ALABAMA ANSWER

Having heard the Negro complainants, the Commission prepared in the afternoon session of the first day to hear the rejoinders of registration officials and custodians of registration records.

After the noon recess, the records of Macon County Probate Judge William Varner were brought into the courtroom. Judge Varner had agreed, with some hesitation, to appear and permit the Commission to examine his subpenaed records in Montgomery despite a letter he had received from the State attorney general advising him that he had no authority to move the records from Macon County. A probate judge's records include data on numbers of white and Negro voters and on poll tax payments.

When Judge Varner was called as a witness, Attorney General John Patterson, who became Governor of Alabama a month later, addressed the Commission from the front row of seats, and the following exchange took place:

Mr. PATTERSON: There are certain serious constitutional objections that we want to raise in this hearing, and we are somewhat afraid that it might subsequently be considered as a waiver of our objection if we don't raise them at this time. Now, Judge Varner is the probate judge of Macon County. He is a constitutional judicial officer of this State, and he is expressly prohibited by law from taking the records of his office outside of his county except under certain unusual circumstances.

We feel that, in addition to that, this Commission, which is the Civil Rights Commission, which is an arm of the legislative [sic] branch of the Government, has no constitutional right to call a judicial officer in here and question him about the affairs of his court, and we want to raise that objection at this time.

VICE CHAIRMAN STOREY: . . . You have that privilege, but I don't think you will find the Commission transgressing on any constitutional rights, and we will proceed with the examination of Judge Varner.[23]

But Judge Varner's testimony proved to be singularly unproductive. Though he had been judge of probate in Macon County for 21 years, he professed himself unable to supply any information about the activities of the boards of registrars. As judge of probate he receives the registration certificates from the board, enters them on his books,

[23] *Id.* at 125–26.

and arranges for publication of the official voting lists. The books and documents he brought with him to the courtroom included a list of qualified voters which is brought up to date every 2 years. But Judge Varner testified that he received no records of persons who may have been denied registration.

He said he had nothing to do with applications, appointment of registrars, or operations of the board; that he had never watched the registrars while they were in session, and in the past year had not been in the room used by Negro applicants. He said he knew that Negroes had been registered during the previous year, but did not know how many. Neither did he know how many white persons had been registered, and he testified he had nothing to do with purging names of voters other than to take from his lists the purged names supplied by the board.

Following Judge Varner on the stand was Mr. Grady Rogers, a member of the Macon County Board of Registrars.[24] Attorney General Patterson again firmly objected, but was overruled by the vice chairman, and Mr. Rogers took the stand.

Aged 67, he had lived in Macon County for 35 years. He had been a member of the board of registrars, his only job, since May or June 1957. He had earlier served on the board for 4 years.

Mr. Rogers answered questions about administrative practices of the board, but balked when Vice Chairman Storey said: "Now, according to the testimony here, the white people go to the grand jury room."

Mr. Rogers' first response was, "At times"; then: "I don't care to answer that question on the advice of counsel."

Vice Chairman Storey inquired: "Why do you refuse to answer it?"

"Because it might tend to incriminate me."

"You do have another room, do you not?"

"The same answer."

"Now, so we will get it in the record, you refuse to answer because it might be self-incrimination; is that correct, sir?"

After consulting at length with Attorney General Patterson, Mr. Rogers finally answered: "And, also, in addition to the other answer to the first question that applies to this question, because I am a judicial officer under the State laws of Alabama and my actions cannot be inquired into by this body."

For the record, Vice Chairman Storey asked a series of questions designed to elicit answers which would either substantiate or refute the testimony of the Negro witnesses from Macon County. Each met the same response. Mr. Rogers claimed the protection of the Fifth Amendment against self-incrimination, and stated that, as a State

[24] *Id.*, at 152–58, 161, 164, 166, 167.

judicial officer, he was not required to answer to a Federal commission.

In the course of the questioning, it developed that Mr. Rogers and other registrars who had been subpenaed had not been sworn during a mass oathtaking that morning. At this point, after a consultation with the Attorney General, Mr. Rogers told the Commission that he objected to taking an oath.

Vice Chairman Storey then ordered a rollcall of the subpenaed State officials and asked each whether he had been sworn. Mr. W. A. Stokes, Sr., and Mr. J. W. Spencer, Barbour County registrars; Mr. M. T. Evans, Bullock County registrar, and Mr. Livingston and Mr. Rogers, of Macon County, refused to be sworn. The Barbour and Bullock County registrars said that they had not brought the records subpenaed by the Commission because the records had been impounded by Judge Wallace before they had been served with the Commission subpena.

Vice Chairman Storey asked, "Mr. Rogers, do you refuse to be sworn?"

Mr. Rogers answered, "On the grounds I am a judicial officer and this Commission has no right to subpena me."

The other registrars had like reasons, apparently whispered to them by their counsel, Mr. Patterson.

Mr. Livingston:

I refuse on the grounds that I am a judicial officer, in the State of Alabama, and on the ground that this Commission does not have authority to interrogate judicial officers of the State of Alabama.

Mr. Spencer:

Because I am a judiciary officer of the State of Alabama and, secondly, this Commission has no authority to have a judiciary officer sworn in and be interrogated.

Mr. Stokes:

Well, as I am a member of the board of registrars, acting in a judicial capacity, I don't care to have the Commission interrogate me. I don't think they have the authority to interrogate me.

Mr. Evans:

I am a judicial officer of the State of Alabama.

"WE HAVE NO BLACKS"

Like other probate judges and registrars who took the stand that day, Judge of Probate Harrell Hammonds, of Lowndes County, offered a State circuit court subpena as the reason he had failed to produce the records demanded by the Commission's prior subpena.[25]

[25] *Id.* at 182–188.

When Commissioner Wilkins asked him if it were not true that there were no Negroes registered in Lowndes County, Judge Hammonds replied, "That's what they say."

"In other words," Commissioner Wilkins continued, "out of a population of 17,000 or 18,000, 14,000 or 15,000 Negroes and 3,000 or 4,000 whites, you have approximately 2,200 or 2,300 whites registered and not a single Negro? . . . Don't you think that is a rather unusual and peculiar situation?"

"It might be unusual, peculiar in some places; yes," answered Judge Hammonds.

Mrs. Dorothy Woodruff, one of the three Lowndes County registrars, testified [26] that, except for filling out the application, applicants were not required to demonstrate their literacy, nor were they required to self-address an envelope.

" . . . After we meet, we discuss it and if their qualifications are up to par we send them their certificate. . . . We have never had any that haven't been up to par," Mrs. Woodruff testified. When Vice Chairman Storey asked, "Is that true as to both the blacks and the whites?" she replied: "We have no blacks."

Neither she nor Clyde A. Day, another Lowndes County registrar, could offer any explanation of why no Negro had applied for registration during their terms of office.[27]

COMMISSIONER BATTLE SPEAKS

Earlier in the afternoon, Commissioner Battle, directing a question to Mr. Rogers, had said:

Mr. Livingston, will you listen to this, too, please, sir? This morning we have heard some 20 or 25 people testify that they have been denied the right to register in your county. They each stated that in their opinion it was on account of their race. Would either of you gentlemen care to make any statement as to why any of those would-be registrants were denied the right to register?

Neither Macon County registrar cared to make such a statement.

Now, after the final witness of the day had been heard, Commissioner Battle, a former Governor of Virginia, read a statement as follows: [28]

Mr. Chairman and ladies and gentlemen, like Dean Storey, I have come to the State of my ancestors. My father was proud to be an Alabamian. My grandfather, Cullen A. Battle, was my constant companion during my boyhood days and, in the War Between the States, the commanding officer of a brigade of Alabama troops which was honored by a resolution of the Confederate Congress, thanking the Alabama officers and Alabama men for their services to the Confederacy.

[26] *Id.* at 199–204.
[27] *Id.* at 202, 204–206.
[28] *Id.* at 206–207.

My grandfather was subsequently denied his seat in Congress, to which the people of Alabama had elected him, because he had served the Confederate cause.

So, I come to the people of Alabama as a friend—I think I may be permitted to say—returning to the house of my father, and none of you white citizens and officials of Alabama believe more strongly than I do in the segregation of the races as the right and proper way of life in the South. It is, in my judgment, the only way in which racial integrity can be preserved and thus prove beneficial to both races.

The President of the United States was not in error when, in asking me to serve as a member of this Commission, he said he wanted someone with strong southern sentiments, which I have, and I accepted this assignment in the hope that I might be of some service to my country and to the Southland.

It is from this background, ladies and gentlemen, that I am constrained to say, in all friendliness, that I fear the officials of Alabama and certain of its counties have made an error in doing that which appears to be an attempt to cover up their actions in relation to the exercise of the ballot by some people who may be entitled thereto.

The majority of the Members of the next Congress will not be sympathetic to the South, and punitive legislation may be passed, and this hearing may be used in advocacy of that legislation, which will react adversely to us in Virginia and to you in Alabama.

Of course, it is not up to me, nor would I presume to suggest how any counsel or any official should govern himself; but we are adjourning this hearing until tomorrow morning, and may I say to you, as one who is tremendously interested in the southern cause: Will you kindly reevaluate the situation and see if there is not some way you, in fairness to your convictions, to the officials, may cooperate a little bit more fully with this Commission and not have it said by our enemies in Congress that the people of Alabama were not willing to explain their conduct when requested to do so.

This may be entirely out of order, ladies and gentlemen, but it was in my heart to say it, and I hope you will take it in the spirit in which I say it.

The following morning, Editor Grover C. Hall of *The Montgomery Advertiser*, one of the South's most articulate spokesmen, wrote:

We do not find it easy to take an unmodified position on the noncompliance of the Alabama officials summoned before the U.S. Civil Rights Commission. . . .

The Advertiser will be blunt about the matter.

The refusal of the officials to testify or offer their voter registration records will be construed as an effort to hide something. . . .

Would it not have been better, as Governor Battle reasoned, to fork them over and avoid all the commotion? . . . when it is already notorious that there are counties like Lowndes and Wilcox without a single Negro voter, the revelations would only confirm the obvious.

There must be some Negroes in these counties qualified by Alabama law to vote.

The *Lee County* (Ala.) *Bulletin*, published in the heart of the Black Belt, had this to say:

Mr. Patterson's pugnacious attitude cannot help but create the impression in other parts of the country that we've got something to hide . . . the position Mr. Patterson takes might serve no purpose other than to whip up further the emotions the whole racial issue has aroused.

E. L. Holland, Jr., writing in *The Birmingham News*, said that Commissioner Battle had "raised a sober point as the dark velvet skies gentled down over Montgomery. Actions of the day made it clear that we had had sober reminders of our difficulties."

The Atlanta Constitution said that "there can be no doubt that . . . Governor Battle (is) correct," and added: "But if they will not heed him they will heed no one and the tragedy will have to be played out to the bitter end." Later, in an editorial urging the extension of the Commission on Civil Rights, *The Constitution* remarked: "The irresponsible defiance of this Commission in Alabama has done the South's cause more harm than anything since the hate bombings."

Alabama officials were unmoved. Attorney General Patterson's answer was in the press a few hours after Commissioner Battle made his plea. Mr. Patterson denied that Alabama "has anything to hide." He said that registrars—

> have performed their duties according to law. I know this to be a fact. The records . . . are in good order, and all citizens both black and white have been treated fairly, justly and impartially. . . . Our duty in this case is clear: We must do everything within our power to prevent this unlawful invasion of the State of Alabama's judicial officers by the legislative and executive arms of the Federal Government, the Civil Rights Commission in this instance. . . . In fights of this nature there can be no surrender of principle to expediency. The time for retreating has come to an end.[29]

TO THE COURT

That evening—December 8—the Commission voted to turn the complete record of the proceedings over to the Attorney General of the United States for appropriate action.[30]

The Attorney General promptly filed civil action No. 1487N in the U.S. District Court for the Middle District of Alabama, Northern Division, entitled In re: George C. Wallace, W. A. Stokes, Sr., Grady Rogers, E. P. Livingston, M. T. Evans, and J. W. Spencer. The suit sought a court order requiring the named parties to produce evidence (the records) and give testimony before the Commission.[31]

After some legal sparring by the defendants, U.S. District Judge Frank M. Johnson, Jr., entered an order commanding the contumacious witnesses to appear and testify, and produce the records called for, before the Commission or a subcommittee on January 9, 1959.

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[29] Quotations from an interview reported in *The Montgomery Advertiser*, Dec. 9, 1958.

[30] This action was in accordance with Public Law 85–315, 85th Cong., Sept. 9, 1957, 71 Stat. 636, sec. 105(g).

[31] These and other pleadings in civil action 1487N remain on file in the Federal court in Montgomery, Ala. Copies are on file with the Commission on Civil Rights and the Department of Justice. No reason was assigned for not naming Loundes County Registrar Colby C. Coleman as a party. He, too, refused to answer all questions relevant to practices of the board in which discrimination against Negro applicants for registration might be found.

Argument on the matter was set for hearing before the court on January 5, 1959.

Subsequently, and prior to the court hearing set for January 5, the contumacious witnesses concluded an agreement with the Department of Justice's counsel for the Commission, which was to be embodied in an order of the court, subject to Commission approval.

The order said that the Commission had the "right" to inspect the registration records of Barbour, Bullock, and Macon Counties[32] "to the extent that same are relevant to the commission's inquiry and in a manner consistent with proper preservation and use of the records by State authorities." The inspection, ordered to take place before January 9, was to be made in the counties where the records were being kept. Judge Johnson retained jurisdiction of the matter in case it became necessary for the Commission's counsel to return to court to ask for more specific orders.

Members of the Commission's staff then proceeded to the seats of the three counties named in the order. On January 9, the Commission reconvened the Alabama hearings in Montgomery to hear four members of the staff testify under oath as to what had been revealed by the examination of the registration records in these counties. Their full testimony may be found in the hearing transcript, pages 286 through 321.

THE MACON COUNTY RECORDS

An examination of the Macon County records, they reported, had yielded the following information:

There were approved applications on which question No. 19 ("Will you give aid and comfort to the enemies of the U.S. Government or the government of the State of Alabama?")[33] had not been answered at all.

An applicant was rejected because she had listed the county of her birth but not the State.

One rejected application had no errors, but the applicant had failed to write in her name for the fourth time in question No. 3.

An applicant who had indicated continuous residence in the State since 1930 (only 2 years is required for registration) was rejected for failing to give the month and the day.

No rejected application bore any indication that the applicant had been notified of rejection (an appeal to the courts must be made within 30 days).

In one set of applications examined, 51 Negroes had been required to copy article 2 of the U.S. Constitution, but only 3 white applicants were required to copy this same lengthy article.

In one group of 107 rejected applications, 73 were specifically identified as having been those of Negroes, and 11 were applications of white persons. The remaining 23 were not identified as to race.

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[32] No reason was given for excluding from the order the other counties under study by the Commission: Dallas, Lowndes, and Wilcox. The records in these three counties, unlike those in Barbour and Bullock Counties, had been impounded by State courts *after* subpenas *duces tecum* requiring their production before the Commission had been served.

[33] The questionnaire is reproduced in the Hearings, *op. cit. supra* note 17, at 17, 18.

There were accepted applications which had no copies of handwritten constitutional provisions attached. Most of these were applications of white persons.

In a group of 17 applications marked "Approved" were errors of the same type that had caused rejection of other applications. Sixteen of these seventeen were found to have been registered, and of these, 15 were white persons.

One of the staff members dryly noted that "an inference of racial discrimination on these particular records seemed justified."

Despite the court order, staff representatives had been permitted to examine only two applications in Barbour County and two in Bullock County. Both counties were in the Third Circuit of Judge George C. Wallace, who had impounded their registration records.

In a motion filed on January 9 in the Federal court by the Department of Justice, attorneys argued that, because of the dilatory and obstructive tactics of Judge Wallace, the order of January 5 had not been satisfied insofar as it applied to the records of Barbour and Bullock Counties. The motion asked more specific relief against Judge Wallace and the registrars of the two counties, Messrs. Evans, Stokes, and Spencer.

Judge Johnson, in disposing of the contentions advanced by the contumacious State officials, made several important rulings. He found the part of the Civil Rights Act of 1957 that authorized investigation of alleged discriminatory practices was "appropriate legislation" under the Fifteenth Amendment. Hence, the sovereignty of Alabama, or any other State, must yield to this expression of the will of Congress.

"Concerning the requirement of Wallace to produce these records," the opinion said, ". . . there is no concept of judicial privilege or immunity which relieves him of this requirement . . . judicial status does not confer a privilege upon Judge Wallace to disregard the positive command of the law . . . such status does not give immunity from inquiry which is duly authorized, as this inquiry is."

As for the registrars, Judge Johnson had this to say:

The contention that the registrars are judicial officers has no merit in this action. . . . Any objections that they now make will therefore be, and they are hereby, overruled and denied.[34]

Judge Wallace responded with an elaborate game of hide and seek, delaying obedience to the court order by turning the records over to grand juries. The Barbour County records were the first to be produced and examined.

THE BARBOUR COUNTY RECORDS

Discussion with Registrar Spencer disclosed that white and Negro applicants used the same room while applying, but not usually at the

[34] *In re Wallace,* 169 F. Supp. 63 (M.D. Ala. 1959).

same time. It was said that as many as six applicants could be processed at one time. Barbour County registrars ordinarily asked a few questions, such as: "Who is probate judge?" "Who is the circuit judge?" "How many representatives are there in the legislature?" If these questions are answered to the satisfaction of the board, the applicant is given a questionnaire to complete. Applicants are not required to read or copy any part of the Constitution.

If errors are found on the questionnaire, which is examined in the presence of the applicant, it is returned with the statement, "You made a mistake," but the error is not identified. No record is kept of the total number of applicants, and the forms are usually destroyed about 30 days after the application is made.[34A] There is no limitation on the number of times a voter may act as a voucher for applicants.

Examination of the records available indicated that 607 white and 15 Negro applicants were registered between July 1956 and April 1958. One hundred and fifteen questionnaires of persons found acceptable by the board were examined. Nineteen of these were submitted by Negroes and 96 by whites. The 115 forms disclosed 97 errors, with question No. 5 being answered erroneously by 52 applicants. Questions 1, 2, 3, and 19 were frequently omitted. One accepted white applicant had answered question No. 19 ("Will you give aid and comfort to the enemies of the U.S. Government or the government of Alabama?") with a reply as murky as the question: "No unless necessary." Another accepted white applicant answered question No. 3 ("Give the names of the places, respectively, where you have lived during the last 5 years, and the name or names by which you have been known during the last 5 years") with: "all the people of Clayton."

THE BULLOCK COUNTY RECORDS

Production of the Bullock County records was preceded by rumor of a grand jury stipulation which caused the Commission's Department of Justice counsel to advise against examining the records. Later, though the rumor was verified, he changed his stand. It was the feeling of Commission agents on the scene that the matter could have been handled more expeditiously by the Commission's own staff attorneys.

The 5-year-old official voting list of Bullock County showed only five registered Negroes in the county. M. T. Evans was the only registrar in Bullock County at the time, and since board action by a majority of the members is required by law, the Bullock County board

[34A] *Hearings on Pending Civil Rights Bills Before a Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary,* 86th Cong., 1st Sess. (1959), p. 191 (testimony of the U.S. Attorney General William P. Rogers).

had been inoperative since the resignation of its former chairman in mid-1957.

The board records finally produced were in confusing disorder. Because of this and the limited time available for examination, applications were selected at random.

The applications of 19 white registered electors contained one or more errors. However, each of the 19 was allowed to complete another questionnaire "for the record" which was attached to the first application. There was no evidence that any Negro applicant was ever given this "second chance." None of the forms examined had any copied constitutional provisions attached, as required by Alabama law. As in Macon County, if an applicant was registered, he was to be notified. But, if registration was refused, no notice was given.

The "voucher" system was found to be the principal Bullock County device for denying Negroes the right to vote. A voucher, white or Negro, is permitted to vouch for only three applicants in any 3-year period. The record of one white voucher showed that he had vouched for three white applicants, all of whom had been registered, on July 1, 1957. This card bore the notation "three strikes out." The card of one of the five Negro registrants showed that he had vouched for three Negro applicants, none of whom was registered. Under this system, the rejection of 3 applicants supported by each of the 5 qualified Negro voters in the county would mean a 3-year wait before the remaining 5,420 voting-age Negroes in the county could even apply for registration.

Having reviewed the records of all its investigations, hearings, and other proceedings, the Commission unanimously made the following findings of fact specifying and confirming the denial of the right to vote in Alabama:

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN ALABAMA VOTING HEARING

I. FINDINGS OF FACT

1. Macon County

a. Separate facilities were utilized by the Macon County Board of Registrars in receiving and examining applicants for registration. White applicants were examined in a large room, known as the grand jury room, in which numerous applicants were permitted to be present at the same time. Negro applicants were examined in a small room in which not more than two applicants were permitted to be examined for registration at any one time.[35]

b. Negro applicants were delayed for long periods before being admitted to the examination room. In some cases the waiting period

[35] *Op. cit. supra* note 17, at 15–21.

commenced at 6 or 7 o'clock in the morning and continued until late in the afternoon. Negro witnesses observed no similar delays encountered by white applicants with respect to gaining admission to the separate white examination room. Negroes waiting to enter the examination room were compelled to wait long periods because the Negroes already admitted to the room were engaged in copying lengthy parts of the Constitution of the United States.[36]

c. Not more than two applicants for registration were permitted in the examination room at any one time. The examination consisted of the completion of the application, oath, and questionnaire; the copying verbatim of portions of the U.S. Constitution and, in some cases, oral examination.[37]

d. Many Negroes were forced to return two or three times on different days before being admitted to the registration room. The inconvenience and expense of taking time off from their employment served not only to prevent registration of Negroes, but discouraged them from making attempts to register.[38]

e. On several occasions the Board of Registrars failed to convene and function on scheduled registration dates. Negroes seeking to apply for registration on such dates were unable to locate the board, and, therefore, unable to apply for registration. If, on such dates, the Negroes were able to locate the board, they were advised by the board that the board was not receiving applications on that date.[39]

f. On other scheduled registration days, the Board of Registrars met, but at irregular hours. This fact prevented many Negroes who appeared at the scheduled time from having the opportunity to file applications.[40]

g. In reviewing applications the Board of Registrars applied different and more rigid standards to Negro applications than to white applications. An examination of the applications for registration for the period September, 1957, to December, 1958, established that many Negro applicants were denied registration because of inconsequential errors which they made, whereas many white applicants who committed similar errors were permitted to register.[41]

h. The Board of Registrars failed to register Negro applicants ostensibly possessing statutory qualifications, including a number of well-educated Negroes previously registered in one or more other states.[42]

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[36] *Id.* at 21, 33, 43, 85, 116, 117.
[37] *Id.* at 17, 18, 19, 20, 21, 28.
[38] *Id.* at 30, 86.
[39] *Id.* at 40, 47, 78, 79, 85, 86.
[40] *Id.* at 78, 85.
[41] *Id.* at 289, 290, 291, 292, 308, 309.
[42] *Id.* at 33, 36, 37, 38, 41, 45, 51, 64, 73, 74, 88, 102, 103, 106, 107, 109, 110, 111, 113.

i. In the period 1951 through November 15, 1958, a total of 1,585 Negroes made application to register. Of this number 510, or 32 percent, became registered.[43]

j. The 1950 Negro population of Macon County exceeded 27,000 of whom about 14,000 were of voting age. In 1958 there were 1,218 Negroes registered to vote.[44] White population of Macon County in 1950 was 3,177. Whites registered to vote in 1958 numbered 3,102.[45]

2. Dallas County

a. The board of registrars allows Negroes to complete application forms, but does not require oral or written examination. Negro applicants are not notified by the board as to approval or disapproval of applications.[46]

b. Some Negro applicants ostensibly possessing statutory qualifications to register have each filed several applications, and one individual filed 30 applications. Of that group, none has heard from the board with respect to any application filed.[47]

c. Although the board of registrars accepts applications from Negroes, it has registered but 2 out of approximately 800 Negro applicants in the past 5 years.[48]

d. Estimated county population, 52,000, of whom about 40,000 are Negroes; Negroes of voting age, about 18,000. Negroes registered to vote, 163. White population, about 12,000. Whites registered, 8,800.[49]

3. Barbour County

a. Negro applicants for registration were required to wait in the hallway until white applicants had been examined.[50]

b. Applicants were not required to read or write any part of the Constitution. Negro applicants were asked a number of specific questions with respect to the identity of National, State, and local officials.[51] Only upon answering the questions correctly was the applicant given an application blank to fill out. Granting or denial of applications was had immediately upon submission of the completed application form. The board of registrars furnished no reasons or explanations for denials of applications.[52]

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[43] *Id.* at 13.
[44] *Id.* at 23.
[45] *Id.* at 23.
[46] *Id.* at 241, 244.
[47] *Id.* at 226.
[48] *Id.* at 226.
[49] *Id.* at 214, 215, 220, 221, 223.
[50] *Id.* at 259.
[51] *Id.* at 259.
[52] *Id. at* 259, 263.

c. Based on an examination of available application forms and interrogation of registrars, not at the hearing and not yet a matter of sworn record, the following findings of facts are warranted:

(1) Rejected applications were destroyed approximately 30 days after being rejected, which fact made accurate statistical review of the records impossible. The difficulty of accurate analysis of the records was compounded by the disorderly arrangement of application forms.

(2) The board of registrars has no rules and regulations covering registration.

d. White applications contained significant errors. In one group of 40 white applications examined, all of which were accepted, 17 contained the endorsing signature of only one member of the board.

e. A substantial number of applications of white registered applicants reflected the presence of handwriting of a person other than the applicant. In the majority of such instances the second handwriting was identifiable as that of one of the members of the board.

f. Total 1950 population, 28,892. Negro population, 15,427. White population of voting age, 8,012. Whites registered, 6,521. Negro population of voting age, 7,158. Negroes registered, 200.[53]

4. Bullock County

a. The board of registrars did not function for about 18 months in the period 1954–56 because of resignations from the board. The vacancies in the board occurred at about the same time that the board was under a court order to register qualified Negro applicants.[54]

b. The Board did not function from approximately July 1957 until the time of the hearing.[55]

c. The rules and regulations of the board of registrars provide that a qualified elector can vouch for no more than three applicants during the term of the board of registrars. The term of the board is 4 years. A voucher card index is maintained by the board. The 1956–57 index showed the number of times each registered voter vouched for an applicant. The index establishes that the board considers that a voucher has vouched for an applicant even though the application vouched for is rejected by the board.

d. There are five registered Negroes in Bullock County. One of the five has already vouched for three Negro applicants, none of whom was registered. Another of the five has vouched for two unsuccessful applicants, while the remaining three Negroes have vouched for no applicants.

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[53] Population figures from *U.S. Census,* 1950. Registration figures from *Birmingham News,* Apr. 20, 1958.

[54] *Op. cit. supra* note 17, at 273, 274.

[55] Unsworn statement of M. T. Evans, only member of board who had not resigned as of the time Commission agents inspected records of Bullock County.

e. The voucher card index includes cards for white vouchers. Examination of the cards for white vouchers disclosed that although a white voucher may exhaust his opportunities to vouch for applicants, none has exhausted his opportunities on unsuccessful applicants.

f. Examination of application forms for white applicants disclosed that approximately 15 white applicants were afforded a second chance in that their first inadequate or improperly completed application was attached to a second corrected application form. Our examination disclosed no Negro applicants who had been afforded this opportunity.

g. Total 1950 population of the county, 16,054. Negro population, 11,185. Negro population of voting age, 5,425. Negroes registered, 5. White population of voting age, 2,633. Whites registered, 2,400.[56]

5. Lowndes County

a. For many years no Negro has attempted to register. Not a single Negro is in fact registered.[56a]

b. Fear of physical harm combined with economic pressure, including threats to call loans, failure to grant loans, and economic presure leveled upon Negro businessmen, comprise the basic reasons why Negroes have not attempted to register. Fear of loss of employment, especially among schoolteachers and administrators, is also a serious deterrent to attempts to register.[57]

From 1954 to 1958, no white applicant seeking registration was rejected.[58]

d. Estimated population, 18,000, of whom about 15,000 are Negroes and about 3,200 are whites. Whites registered, 2,100. No Negroes are registered.[59]

6. Wilcox County

a. Only one Negro has attempted to register in Wilcox County in recent history. He was unsuccessful in his attempt.[60]

b. Other Negroes intending to attempt registration were thwarted by conflicting instructions from officials as to where and how applications should be procured and submitted.[61]

c. Substantial fears among the Negro population, including fear of economic reprisal and extending to fears of physical violence have deterred potential Negro applicants from attempting registration.[62]

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[56] *U.S. Census*, 1950. Registration figures for Negroes counted by voting team from records of board. White registration figures from *Birmingham News*, Apr. 20, 1958.
[56a] *Id.* at 200, 201.
[57] *Id.* at 217, 218.
[58] *Id.* at 203.
[59] *Id.* at 185, 186, 187.
[60] *Id.* at 217.
[61] *Id.* at 220.
[62] *Id.* at 217, 218.

d. Total 1950 population, 23,476. Negro population, 18,564. White population of voting age, 3,056. Negro population of voting age, 8,218. Whites registered, 3,183. Negroes registered, 0.

TRUTH VERSUS FANCIES

Thus, after almost four months of staff study, investigations, hearings, negotiations, compromises, delays, and court actions, the Commission on Civil Rights was able to lay bare the facts on voting in three Alabama counties.

The Commission had, as Vice Chairman Storey had said in quoting the Senate majority leader, found that it could "gather facts instead of charges"; that it could "sift out the truth from the fancies."

But what of the three other counties—Dallas, Wilcox, and Lowndes—where Negro citizens obviously are being denied the vote because of their race?

The voting registration records in these counties have not been examined by the Commission. Nor is it likely that they ever will be. Repeated efforts to examine them have met only repeated obstructions and delays.[62A] At this writing, the Commission is still awaiting a reply to its letters sent to Alabama asking that arrangements be made for examination of the records in these counties.

Governor Patterson's assertion in December that "Alabama has nothing to hide" was followed in a few weeks by introduction of a bill in the Alabama Senate requiring registrars to destroy within 30 days the applications and questionnaires of rejected applicants for registration.[63] The bill, which passed both houses by unanimous vote, was amended only to make destruction of the records permissive rather than mandatory. *The Montgomery Advertiser* hailed passage of the bill with the headline: "Alabama Legislature Hurls Legal Punch at U.S. Vote Probe."

Two months after the Commission's December hearing in Montgomery, the U.S. Department of Justice filed an action in the U.S. District Court for the Middle District of Alabama to force the registration of qualified Negroes in Macon County. The suit named as defendants the two surviving members of the Macon County Board of Registrars, Mr. Grady Rogers and Mr. E. P. Livingston. However, Mr. Rogers and Mr. Livingston had meanwhile resigned from the board, so the court dismissed the suit for lack of a party defendant.

[62A] See *Hearings on Pending Civil Rights Bills Before a Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 86th Cong., 1st Sess. (1959), p. 159 (statement of Joseph S. Clark, U.S. Senator from Pennsylvania).

[63] Senate bill 18, as reported in *The Birmingham News*, Feb. 6, 1959.

The facts about voting in some parts of Alabama which were brought out at the Commission's December hearing only hardened the determination of some Alabama citizens to bar Negroes from the voting booths. If this was not made clear by the passage of the bill permitting the destruction of registration applications, then a development in Bessemer, near Birmingham, left little doubt.

Asbury Howard, Sr., a Negro union leader in Bessemer, saw a cartoon in the *Kansas City Call*, a Negro newspaper. Mr. Howard thought it would be suitable for reproduction on a placard urging Negroes to register and vote. He employed a white sign painter to duplicate the cartoon on the placard.

On Thursday, January 29, 1959, Police Chief George Barron of Bessemer went to the sign painter's shop. The placard was still on the drawing board. It had not been publicly displayed. Chief Barron arrested the sign painter, charging him with violation of section 2572 of the Bessemer City Code, which prohibits the publication of libelous and obscene material. Chief Barron then went to the service station operated by Mr. Howard and arrested him. Later, in jail, Mr. Howard also was charged with violating section 2572.

Trial was set for January 24, 1959, before City Recorder James Hammonds. Negroes who came to the city hall that day were searched before being permitted to enter. White persons who came to hear the trial were not. The sign painter, who did not have a lawyer, entered a plea of guilty.

Asbury Howard's lawyer entered a plea of not guilty. Chief Barron was the sole witness for the city. He testified that he went to the sign painter's office on a "tip," confiscated the sign, learned who had ordered it, and then had arrested Mr. Howard. He conceded that Mr. Howard had committed no offense in his presence that day, nor had he been guilty of loud or boisterous conduct.

Mr. Howard was found guilty as charged. Both he and the sign painter were sentenced to 6 months in jail and ordered to pay $100 fines.

While David H. Wood, counsel for Mr. Howard, was occupied with details necessary for preparing an appeal for both defendants, Police Detective Lawson Grimes told Mr. Howard to leave the courtroom and go downstairs. Mr. Howard met a group of white men, later estimated to number about 40 or 50. Among them was a city policeman named Kendricks. Without provocation, the white men attacked Mr. Howard. His son, Asbury Howard, Jr., called out a warning to his father at the moment of attack. Several white men prevented him from going to his father's aid, drawing knives and

blackjacks from their pockets. As he pressed forward, he, too, was struck, knocked down, and beaten.

A police officer returned to the courtroom to inform Mr. Wood of what had happened, and the attorney hastened to the rescue of the Howards. The younger Howard was taken to jail, charged with resisting arrest and disorderly conduct, and released on $600 bond.

Asbury Howard, Sr., was taken to Bessemer General Hospital, where his head wounds were closed with 10 stitches. At this writing, his conviction was still pending appeal.[64]

The Alabama story is not ended.

[64] Nationwide newspaper reports, augmented by a statement to the Commission by Mr. Wood, counsel for Mr. Howard, Sr., are the sources of this information.

CHAPTER VI. LOUISIANA ROADBLOCK

In November 1958, the first of a continuing stream of affidavits alleging denial of the right to vote were received by the Commission from Negro citizens of Louisiana. The complainants alleged either that they had been denied the right to register in the first place, or that, having been registered, their names were removed from the rolls and that they were not allowed to register again.

As with all complaints meeting the requirements of the Civil Rights Act, the Commission conducted a field investigation in which all the complainants were interviewed. It also collected all available voting statistics.

According to figures published by the secretary of state of Louisiana, there were 132,506 Negroes registered in 1959 and 828,686 whites. Voting-age Negroes in 1950 comprised about 30 percent of the voting-age population; in 1959 they comprised 13 percent of the registered voters. In 18 of the State's 64 parishes more than half of the 1950 voting-age Negroes were registered. But in four parishes in which voting-age Negroes far outnumbered voting-age whites—East Carroll, Madison, Tensas, and West Feliciana—no Negro was registered in 1959. In nine other parishes with substantial voting-age Negro populations, fewer than 5 percent of voting-age Negroes were registered. Moreover, in 46 of the 64 parishes, the number of registered Negroes had declined since 1956, in some cases by dramatic proportions such as in Red River where the number dropped from 1,360 to 16, or St. Landry, from 13,060 to 7,821, or Webster, from 1,776 to 83. In only 14 parishes had Negro registration increased; in each case the increases were relatively slight.

After these preliminary studies, the Commission moved to examine official State registration records. The request was made of Attorney General Jack Gremillion, who by State law serves as counsel for registrars in matters concerning the Federal Government. By agreement with the attorney general, a Commission representative visited the registrars in two parishes—Caddo and Webster—on March 12, 1959. The attorney general and several State and parish officials attended the meeting.

The registrars were questioned orally about their official practices. But examination of their records was denied under a Louisiana law which permits such examination only by a registered voter of the

parish, and permits copying of the records only on petition of 25 registered voters.

Twice thereafter, William Shaw, counsel for the Joint Legislative Committee of the Louisiana Legislature, demanded in his capacity as attorney for the registrar of Claiborne Parish that the Commission disclose the names of the complainants from that parish. He asserted that their affidavits were false and that their identity was required for a grand jury presentment on a charge of perjury instituted by his client. He also mentioned Louisiana statutes on accessories after the fact, stating that concealment of the identity of a person charged with crime would make the concealer liable for criminal prosecution. Attorney General Gremillion also tried several times to get the names. The Commission stood firm on its policy against divulging complainants' names.

Before deciding on a costly public hearing, the Commission resolved to try every other legitimate means of getting the needed information about voting in Louisiana. After negotiations between its staff director and the Louisiana attorney general, the Commission prepared interrogatories to be answered under oath by the registrars of the parishes involved. Attorney General Gremillion promised his cooperation. But when the interrogatories were sent to registrars in 19 parishes, Mr. Gremillion took exception to the questions, and announced that he saw no purpose in answering them.

The Commission then decided to hold a hearing in Shreveport, Caddo Parish, La., on July 13, 1959. At this time, 78 sworn voting complaints had been received: 8 from Bienville Parish; 9 from Bossier Parish; 8 from Caddo Parish; 7 from Claiborne Parish; 11 from De Soto Parish; 2 from Jackson Parish; 1 from Ouachita Parish; 8 from Red River Parish; and 24 from Webster Parish.

On July 8, after weeks of legal preparation and field investigation by the Commission staff, U.S. District Judge Benjamin Dawkins informed the Commission that the attorney general of Louisiana intended to apply for a temporary restraining order to enjoin the Commission from holding its July 13 hearing. (The attorney general had recently been confronted with a U.S. Department of Justice suit concerning a purge of Negro voters in Washington Parish.) Two days later, the suit was filed against members of the Commission, both individually and in their representative capacity.

Judge Dawkins granted Commission representatives 90 minutes to prepare their response. The Attorney General of the United States, advised of the development, instructed the Commission agents to proceed as best they could until his own agents could reach Shreveport to defend the Commission in the suit.

While the Commission was preparing its answer, Vice Chairman Storey, a former president of the American Bar Association, was personally served by the U.S. marshal with complaints in two civil actions. One was a suit brought by the registrars in their individual capacities and as registrars against the Commissioners individually and as members of the Commission. This suit challenged the constitutionality of the Civil Rights Act of 1957, which created the Commission. The other suit was brought on behalf of various citizens of Louisiana who had been subpenaed by the Commission to testify concerning their activities in purging registered voters and any knowledge they might have as former registrars.

At 5:30 p.m. on July 12, less than 16 hours before the Commission hearing was scheduled to begin, Judge Dawkins issued the restraining order. As a Federal executive agency, he ruled, the Commission is subject to the Administrative Procedure Act, which requires that persons affected by agency action must be timely informed of the matters of fact and law asserted. Recalling the traditional right to be confronted by one's accusers and allowed to cross-examine them, Judge Dawkins declared that there was every reason to believe that some of the complainants who had filed complaints with the Commission—

> will testify that plaintiffs have violated either the State or Federal laws, or both. Plaintiffs thus will be condemned out of the mouths of these witnesses and plaintiffs' testimony alone, without having the right to cross-examine and thereby to test the truth of such assertions, may not be adequate to meet or overcome the charges, thus permitting plaintiffs to be stigmatized and held up, before the eyes of the Nation, to opprobrium and scorn.

Judge Dawkins concluded with a statement that the constitutionality of the 1957 Civil Rights Act would be adjudicated by a three-judge Federal court.

Commenting on the Judge's ruling, the Washington *Post* observed:

> The Administrative Procedure Act was intended to apply to agencies which make rules or adjudicate cases. The Civil Rights Commission does neither, of course. It is a factfinding body. . . . To require it to file formal charges and go through the courtroom practice of cross-examination when it is not prosecuting or trying or judging anyone—when it is not engaged in any sort of adversary proceeding—would be sheer nonsense making the discharge of its real function impossible.

Meanwhile, in Shreveport, staff members added up costs of preparing for the hearing and found that those which would have to be incurred again if the judge's order were set aside and the hearing finally held were over $12,000. The Commission decided to ask that the plaintiffs be required to post a $10,000 security bond. Judge Dawkins refused. This time he concluded with the observation that,

while his restraining order might be set aside as wrongful, "it is all part of the game."

THE LOUISIANA COMPLAINTS

The testimony which complaining witnesses had been prepared to offer at the Shreveport hearing, plus the Commission's own field investigations, indicated three major techniques of voting denial.

First, in the parishes of Madison and East Carroll, no Negro was registered, or had ever been registered to vote. Seven witnesses were prepared to testify concerning the situation in these parishes. An effective bar to Negro registration is the requirement exacted by the registrars that each prospective registrant obtain two registered voters to swear to his identity. Since no Negroes were registered in either parish, and since no white person (with one exception) would vouch for a prospective Negro registrant, the complainants were effectively stalled. One of the witnesses, a former Army sergeant and still an active reservist, had fought on the Normandy beaches, been awarded four Battle Stars, was adequately educated and apparently well qualified to vote.

Second, in the parishes surrounding and including Shreveport several of the witnesses had been excluded from registration by preliminary questioning on the part of the registrars before even receiving a registration form. This process is without sanction in Louisiana law. Some of the witnesses had voted in other States before trying to register in Louisiana; others were veterans, professional people, and educators. In other parishes in this area complainants had been registered for some years, but were purged from the registration lists. Upon attempting to reregister they were met with the rigid standards arbitrarily imposed as a result of the campaign initiated by the Joint Legislative Committee of the Louisiana Legislature in December 1958 and continuing in January and February, 1959. The announced purpose of the chairman of the joint legislative committee was to reduce Negro registration in the State of Louisiana from 130,000 to 13,000.

At a series of meetings held throughout the State in these months, registrars were instructed in the procedures of a strict interpretation of the Louisiana registration laws. The instruction was directed by State Senator William Rainach, chairman of the joint legislative committee, but was conveyed to the registrars by the committee's attorney, William Shaw. At the meetings Mr. Shaw documented his instructions by reference to statutes, legal opinions, and particularly the booklet, "Voter Qualification Laws in Louisiana." The front and inside covers of this Citizens Council pamphlet are reproduced on page 102.

VI. Facsimile of Instructions for Registrars and Others in Louisiana.

Voter Qualification Laws In Louisiana

The Key To Victory In The Segregation Struggle

A Manual of Procedure For Registrars of Voters, Police Jurors and Citizens' Councils

December, 1958

- Foreword -

Bloc Control — The Goal of the NAACP and the Communists

The Communists and the NAACP plan to register and vote every colored person of age in the South. While the South has slept, they have made serious progress toward their goal in all the Southern states, including Louisiana.

They are not concerned with whether or not the colored bloc is registered in accordance with law. They are interested only in seeing that all persons in this bloc are registered and in using their votes to set up a federal dictatorship in the United States.

They plan to divide the people of the South, and to take us over, state by state, and parish by parish. They would do this by trading the minority bloc back and forth between our split-up factions until we have sold our heritage of freedom and self-government for a shifting parcel of NAACP and Communist controlled votes.

The Enforcement of Voter Qualifications Laws in Louisiana

At least ninety percent of the bloc that they plan to misuse would have to be registered illegally in Louisiana because ninety percent of them cannot meet the voter qualifications prescribed by law. In fact, ninety percent of this bloc now registered and being used by the NAACP to control some of our elections, are registered in violation of our laws and illegally influencing the election of our officials.

The People, the Officials and the Citizens' Councils in Law Enforcement

It has become vitally important that the people see to it themselves that the Registrars of Voters throughout the state comply fully with the provisions for qualifications of voters set forth in our Constitution and our Statutes.

The ACCL has prepared this manual of legal procedure which Registrars in Louisiana may follow in preventing illegal registration. The manual outlines the methods by which parties who have been registered illegally may be removed by law from the registration rolls.

The consistent use of this manual will be especially helpful to our state and local officials, and local Citizens' Councils in lending the Registrars of Voters the support and guidance that they must have in carrying out the all-important job of enforcing our voter qualification laws.

The Key to Victory

We are in a life and death struggle with the Communists and the NAACP to maintain segregation and to preserve the liberties of our people.

The impartial enforcement of our laws is the KEY TO VICTORY in this struggle.

Form No. 5

CONSTITUTIONAL TEST FOR REGISTRATION

Applicant shall read to the Registrar of Voters and give a reasonable interpretation of the following clauses of the Constitution:

The Legislature shall provide by law for change of venue in civil and criminal cases (Art. 7 Sec. 45 La. Const.)

The exercise of the police power of the State shall never be abridged (Art. 19 Sec. 18 La. Const.)

Prescription shall not run against the State in any civil matter (Art. 19 Sec. 16 La. Const.)

(The above qualification test and a registration application form provided for by Section 1 (c), Article VIII of the Louisiana Constitution, (Form LR-1), were received by me from the_____Parish Registrar of Voters upon my request to register, and I have signed both for acknowledgement and identification with my application to register.)

_____

Applicant for Registration

Ward_____ Precinct_____ Address_____

(Over)

Facsimile of Constitutional Test for Registration of Voters Used in Louisiana.

In instructing the registrars, Mr. Shaw stressed that applicants must be of good character and be able to interpret any clause of the Constitutions of Louisiana or the United States. As a test of intelligence, he advised the registrars to use a set of 24 model cards distributed at the meetings. One of them is reproduced on this page. Mr. Shaw asserted that constitutional interpretations are tests of native intelligence and not of book learning; that experience teaches that most white people have this native intelligence while most Negroes do not. As a further precaution, however, he instructed the registrars not to tell any Negro applicant the number of his ward or precinct, and not to help him fill out his application card.

Senator Rainach himself informed the registrars that "you don't have to discriminate against Negroes" to keep them off registration rolls, because "nature has already discriminated against them." Proclaiming that "a large number of Negroes just can't pass the test for registration," he concluded:

> The tests are based on intelligence, not education, and intelligence is something that is bred into people through long generations.

Third, in Washington Parish during May, June, and July of 1959, over 1,300 of approximately 1,500 Negro registrants were stricken from the rolls on the basis of challenges filed by members of the citi-

zens council of that parish. Virtually all of the Negroes whose names were removed from the rolls had been challenged by four white residents of Washington Parish. The most common basis for these challenges was alleged errors in spelling on the application forms. Investigation revealed that the challengers themselves misspelled words when filling out the challenging affidavits. For a sample, with names of voter and challengers masked out, see facsimile below.

AFFIDAVIT IN CASE REGISTRATION OF VOTER IS CHALLENGED

STATE OF LOUISIANA
PARISH OF Washington

Personally came and appeared before me Curtis M. Thom

(Deputy) Registrar of Voters in and for the Parish of Washington State of Louisiana.

_____ and _____

who being duly sworn, do depose and say:

That they are bona fide registered voters of this parish; that after reasonable investigation by them, and each of them, and on information and belief, that _____

_____

Registered from _____
(Municipal number and street, if any)

To whom was issued registration certificate No. _____ Ward _____

Precinct _____, of this Parish, is illegally registered or has lost his or her right to vote in the precinct, ward or parish in which they are registered, for the following reasons:

Errors in Spelling

And should be erased from the Official Precinct Register of Ward _____, Precinct _____, that this affidavit is made for the purpose of causing said name to be erased.

_____

_____

Sworn to and subscribed before me, on this 26 day of May, 19 54

Curtis M. Thom
(Deputy) Registrar of Voters

Facsimile of Affivadit Used for Challenging the Registration of a Voter in Louisiana.

TABLE 13.—*White registration, selected Louisiana parishes using permanent registration*

Parish	1950 population	Registration			
		March 1956	October 1956	May 1958	November 1958
Bienville	19,105	5,328	5,282	4,700	4,759
De Soto	24,398	5,640	5,692	5,464	5,511
East Feliciana	19,133	2,812	2,818	2,656	2,449
Ouachita	74,713	24,184	23,485	23,731	21,983
St. Landry	78,476	21,708	21,962	13,925	15,469
Union	19,141	6,895	6,895	3,463	3,933

TABLE 14.—*Negro registration, select Louisiana parishes using permanent registration*

Parish	1950 population	Registration			
		March 1956	October 1956	May 1958	November 1958
Bienville	19,105	587	35	28	28
De Soto	24,398	762	770	489	493
East Feliciana	19,133	1,361	1,319	1,224	450
Ouachita	74,713	5,782	889	799	776
St. Landry	78,476	13,050	13,060	6,440	7,181
Union	19,141	1,600	1,099	348	368

TABLE 15.—*White registration, Louisiana parishes using periodic registration*

Parish	1950 population	Registration			
		March 1956	October 1956	May 1958	November 1958
Caldwell	10,293	3,786	3,863	2,190	2,545
Cameron	6,244	2,883	2,954	1,586	1,948
Catahoula	11,834	4,215	4,139	1,956	2,222
Concordia	14,398	3,625	3,667	1,498	2,087
East Carroll	16,302	3,000	3,000	1,964	2,015
Franklin	29,376	8,297	8,357	4,256	6,180
Grant	14,263	5,794	5,822	3,633	4,752
La Salle	12,717	6,861	6,941	4,067	4,905
Lincoln	25,782	7,029	7,638	4,391	4,665
Livingston	20,054	9,953	10,068	5,531	6,543
Madison	17,451	3,028	3,058	1,100	1,314
Morehouse	32,038	9,400	9,565	4,173	4,579
Natchitoches	38,144	9,592	9,916	4,965	6,134
Point Coupee	21,841	4,899	4,946	2,860	3,183
Red River	12,113	3,575	3,603	1,679	1,959
Richland	26,672	7,195	7,291	4,214	4,273
St. Bernard	11,087	11,369	11,369	5,342	7,854
St. Helena	9,013	2,555	2,611	1,237	1,704
St. Mary	35,848	10,250	10,674	8,430	10,246
Tensas	13,209	1,916	2,053	871	928
Vernon	18,974	9,477	9,649	5,965	7,423
Webster	35,704	12,618	12,957	7,568	8,263
West Baton Rouge	11,738	3,044	3,047	1,438	1,700
West Carroll	17,248	5,660	5,685	2,954	3,389
West Feliciana	10,169	1,272	1,290	847	903
Winn	16,119	6,449	6,638	4,021	4,483

TABLE 16.—*Negro registration, Louisiana parishes using periodic registration*

Parish	1950 population	Registration			
		March 1956	October 1956	May 1958	November 1958
Caldwell	10,293	450	124	38	38
Cameron	6,244	236	184	47	76
Catahoula	11,834	330	349	183	187
Concordia	14,398	587	534	121	176
East Carroll	16,302	0	0	0	0
Franklin	29,376	650	649	232	304
Grant	14,263	864	864	376	525
La Salle	12,717	742	364	96	157
Lincoln	25,782	1,166	1,011	441	470
Livingston	20,054	1,162	1,252	428	564
Madison	17,451	0	0	0	0
Morehouse	32,038	935	947	196	205
Natchitoches	38,144	2,954	2,993	998	1,396
Point Coupee	21,841	1,319	1,326	574	635
Red River	12,113	1,512	1,362	15	15
Richland	26,672	740	742	177	179
St. Bernard	11,087	802	802	162	340
St. Helena	9,013	1,694	1,614	851	1,059
St. Mary	35,848	2,668	2,670	2,347	2,659
Tensas	13,209	0	0	0	0
Vernon	18,974	891	892	588	640
Webster	35,704	1,769	1,773	79	80
West Baton Rouge	11,738	1,017	1,036	577	615
West Carroll	17,248	292	292	69	70
West Feliciana	10,169	0	0	0	0
Winn	16,119	1,430	1,442	581	665

CHAPTER VII. FEDERAL POWERS TO PROTECT THE FRANCHISE

> "This Constitution and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding."
>
> —*U.S. Constitution*, Article VI (second paragraph).

The events reported in the preceding chapters have convinced this Commission that qualified American citizens are, because of their race or color, being denied their right to vote. The question is: "What can the Government of the United States do about these clear violations of its fundamental law?"

The initial power of the States to determine voting qualifications is unquestioned. But it is not unlimited. The powers of the Federal Government to protect the franchise derive from certain provisions of the Constitution, as implemented by the Congress and interpreted by the Supreme Court. Together, these form the Federal ground rules within which the States may grant or withhold the franchise. In summary, these constitutional provisions declare that—

(1) all persons born or naturalized in the United States and subject to the jurisdiction thereof, regardless of race, are citizens;[1]

(2) these citizens shall not be denied their voting rights because of race, color, or sex;[2]

(3) those persons voting for U.S. Senators and Representatives shall possess the same qualifications as those entitled to vote for members of the most numerous branch of the State legislature;[3]

(4) Congress is empowered to enforce these provisions by appropriate legislation.[4]

ARTICLE I

> *Section 2.* The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislaure.

Article I, section 2, thus provides that electors for Members of Congress shall have qualifications requisite for electors of the most numerous branch of the State legislature.[5] This is the basic source of every

[1] Fourteenth Amendment, sec. 1.
[2] Fifteenth Amendment, sec. 1; Nineteenth Amendment.
[3] Art. I, sec. 2, and Seventeenth Amendment.
[4] Fifteenth Amendment, sec. 2.
[5] A similar provision regarding qualifications for electors for senatorial candidates is found in the Seventeenth Amendment.

State's power to determine which of its citizens may vote. By prescribing and administering voting qualifications, the States effectively determine who may vote in a national election. But this does not mean that the right is derived from the States. For the Supreme Court has ruled that the right to vote for Members of Congress is a right derived from and secured by the Constitution of the United States.[6]

The elective rights guaranteed by the Fourteenth Amendment afford protection only against deprivations by States, and those guaranteed by the Fifteenth Amendment only against deprivations by the United States and the States. The right to vote for Members of Congress, on the other hand, is secured against the actions of individuals as well as States.[7]

Controversy over the extent to which the power of the United States can be employed to protect the integrity of national elections has arisen on several occasions. Efforts to exercise the Federal power have proceeded predominantly under criminal statutes against conspiracies.[8]

The fact that State officers are elected at the same time and place as national officers does not annul the powers of Congress to protect the integrity of the election as it affects national officers.[9]

In 1894, Congress repealed major substantive portions of election laws that had been passed in the Reconstruction years of 1870–72 and had made interference with national elections an offense against the United States.[10] But it did not repeal the enforcement provision.[11]

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[6] *Ex parte* Yarbrough, 110 U.S. 651 (1884). U.S. v. Classic, 313 U.S. 299 (1941). On the premise that the right to vote for members of Congress has its foundation in the U.S. Constitution, the Supreme Court has determined two principles: (1) When an individual brought action to recover damages because an election board in South Carolina had rejected his vote in a congressional election (Wiley v. Sinkler, 179 U.S. 58 (1900)), it was decided that a procedural statute authorizing direct appeal to the Supreme Court was lawful, because obstruction or application of the U.S. Constitution had been involved. (2) When a natural-born white citizen in Tennessee brough action for damages because he had not been permitted to vote for his Congressman, it was decided that this was a Federal question and should not have been dismissed by a trial court for lack of jurisdiction (Swafford v. Templeton, 185 U.S. 487 (1902)).

[7] U.S. v. Classic, 313 U.S. 299 (1941). This can afford a greater area of protection to participation in elections for Members of Congress than is secured through the Fourteenth and Fifteenth Amendments.

[8] The general conspiracy statute, 18 U.S.C. 371, relates to conspiracies to commit offenses against the United States or to defraud the United States. The civil rights conspiracy statute, 18 U.S.C. 241, is calculated to protect a citizen in the free exercise or enjoyment of rights secured by the United States Constitution or laws. The latter conspiracy law will be discussed later in detail. However, it should be noted that to prove conspiracy in a ballot-stuffing charge, for instance, it would not be enough simply to state that the action had affected the election of national officials. The indictment would have to be drawn to indicate that the stuffing of the ballot box had deprived certain citizens of the enjoyment of their rights under the Constitution to vote for the election of national officials.

[9] In the Yarbrough case, *supra,* pp. 661–2, the Supreme Court noted that "it is only because the Congress of the United States through long habit and years of forbearance has, in deference and respect to the States, refrained from the exercise of these powers, that they are now doubted."

[10] These statutes are discussed more specifically under the section dealing with art. 1, sec. 4.

[11] 18 U.S.C. 241, which is still effective.

Subsequently, a number of cases arose dealing with protection of the integrity of national elections. The Supreme Court held that—

(1) the failure of an election board to include the vote of 11 precincts for congressional candidates was unlawful because the right to vote includes the right to have the vote counted honestly and fairly; [12]

(2) a conspiracy to bribe voters at an election for national officers was not an interference with rights guaranteed by article I, section 2, to other qualified voters.[13]

(3) it was unlawful for election officials to conspire to stuff a ballot box at which a U.S. Senator was being chosen.[14]

Nowhere has article I, section 2, been more useful than in connection with problems of discrimination in primary elections. One of these problems was the so-called white primary, which for years in the South had been effectively employed as a method of depriving Negroes of an opportunity to vote.

Concerning the beginning and the historical evolution of the "white primary" as a device for curbing Negro suffrage, we are privileged to draw from George W. Spicer's comprehensive article, "The Supreme Court and Racial Discrimination." [15] Its use as a means for systematically excluding the Negro from the polls in the one-party South resulted from the fact that anyone barred from the primary was effectively disfranchised. The general election merely formalized and legalized the choices made in the Democratic primary.

Inspiration for the first legislative prescription of the "white primary" apparently came from the inconclusive decision of the Supreme Court in *Newberry v. United States.*[16] The Court declared that a

[12] United States v. Mosley, 238 U.S. 383 (1915). It was argued in this case that what is now 18 U.S.C. 241 was not intended to embrace interference with voting. The reasoning back of this was that section 4 of the act of May 31, 1870, specifically punishing interference with voting at an election was repealed in 1894. Therefore, it was contended that sec. 6 of the same act, which was directed against acts of violence, was not applicable to interference with voting. But such arguments were rejected and the Court noted that sec. 6 through various reenactments was not limited to acts of violence, but dealt with all Federal rights in more general terms.

[13] See United States v. Gradwell, 243 U.S. 476 (1917). In United States v. Bathgate, 246 U.S. 220 (1918), the Supreme Court held that the civil rights conspiracy statute 18 U.S.C. 241, did not embrace conspiracy to bribe voters in an election at which a U.S. Representative, a Senator, and presidential electors were chosen. Bribery was considered to be an offense only under the statutory provisions which had been repealed in 1894. Bribery of voters should be distinguished from attempts to bribe officials of the United States, which offenses are treated specifically in criminal statutes other than those employed in protecting national elections.

[14] United States v. Saylor, 322 U.S. 385 (1944). The import of the *Saylor* decision must be that, although the 1894 repeal ended direct control and supervision, it did not remove the authority to punish frauds affecting national elections when they are disclosed.

[15] 11 *Vand. L. Rev.*, 823–31 (1958). The reader is also referred to George W. Spicer's *The Supreme Court and Fundamental Freedoms,* copyright Appleton-Century-Croft, 1959. The rise and demise of this technique is one of the most significant developments of federalism in the entire area of civil rights conflict. While considered under this section dealing with art. 1, sec. 2, the problem might as accurately have been treated under art. 1, sec. 4.

[16] 256 U.S. 232 (1921).

primary is no part of an election, and hence that the part of the Federal Corrupt Practices Act intended to limit the expenditures of a senatorial candidate in a primary was unconstitutional.

Soon after this decision, the Texas Legislature enacted a law barring Negroes from the polls in any Democratic primary in the State. This law was invalidated by the Supreme Court in *Nixon v. Herndon*[17] as a violation of the equal protection of the laws. The attempt to vest the same power of discrimination in the State executive committee of the party failed because the committee received its authority to act from the legislature and hence was an agent of the State.[18]

But in *Grovey* v. *Townsend*,[19] in 1935, the Court upheld the exclusion of a Negro voter from the Democratic primary under a resolution of the State Democratic convention. Here the Court declared that to deny a vote in a primary was a mere refusal of party membership in a private organization, with which "the State need have no concern." The action by the State Democratic convention was considered not to be State action.

The great turning point came in 1941 in the *Classic* case.[20] Here the Court held that section 4 of article I of the Constitution authorizes Congress to regulate primaries as well as general elections where the primary is by law an integral part of the procedure of choice [of a representative in Congress], or where in fact the primary effectively controls the choice. That qualified citizens and inhabitants of a State have a constitutional right to choose Congressmen was underscored by the Court in the following language:

> Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a State to cast their ballots and have them counted at congressional elections. * * * And since the constitutional command is without restriction or limitation, the right, unlike those guaranteed by the Fourteenth and Fifteenth Amendments, is secured against the action of individuals as well as of States. * * *
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> * * * * * * *
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> Where the State law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary is likewise included in the right protected by article I, section 2. And this right of participation is protected just as is the right to vote at the election. * * *[21]

Then in 1944 in *Smith* v. *Allwright*,[22] the "white primary" was outlawed as violative of the Fifteenth Amendment. The Court declared that the constitutional right to be free from racial discrimination in

[17] 273 U.S. 536 (1927).
[18] Nixon v. Condon, 286 U.S. 73 (1932).
[19] 295 U.S. 45 (1935).
[20] United States v. Classic, 313 U.S. 299, 318 (1941).
[21] 313 U.S. 299, 314, 315, 318 (1941).
[22] 321 U.S. 649, 664, 661 (1944).

voting "is not to be nullified by a State through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election." Declaring that "it may now be taken as a postulate that the right to vote in * * * a primary * * * without discrimination by the State * * * is a right secured by the Constitution," the Court went on to hold that, since by State law the primary was made an integral part of the State election machinery, the action of the party in excluding Negroes was action by the State and consequently in violation of the Fifteenth Amendment. Thus the controlling issue here as in the *Grovey* case was whether the Negro had been barred from the primary by State action. The Court held that he had, and consequently *Grovey* v. *Townsend* was overruled.

Although this decision greatly stimulated Negro participation in Southern primaries,[23] the resistance to it in most of the affected States was prompt and determined. South Carolina and Alabama led the way.[24]

South Carolina promptly repealed all statutory [25] and constitutional [26] laws relating to primaries, and the Democratic primary was thereafter conducted under rules prescribed by the Democratic Party. This bold attempt to circumvent the *Allwright* decision was struck down by the United States district court in *Elmore* v. *Rice*.[27]

Elmore had been denied the right to vote in the Democratic primary under rules promulgated by the Democratic convention, which limited the right to vote in the primary to white persons. Both the district court and the court of appeals ruled that the party and the primary were still used as instruments of the State in the electoral process, despite the repeal of all laws relating to primaries.[28]

Note that the primary involved in the *Allwright* case had been conducted under the provisions of State law, not merely under party rules as in this case. Here the State had permitted the party to discriminate against the Negro voter in violation of the Constitution. The court of appeals put the question before it sharply in this way:

> The question presented for our decision is whether, by permitting a party to take over a part of its election machinery, a State can avoid the provisions of the Constitution forbidding racial discrimination in elections and can deny to a part of the electorate, because of race and color, any effective voice in the government of the State. It seems perfectly clear that the question must be answered in the negative.[29]

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[23] O. Douglas Weeks, "The White Primary; 1944–1948," 42 *Am. Pol. Sci. Rev.* 500 (1948). See also Donald S. Strong, "The Rise of Negro Voting in Texas," 42 *Am. Pol. Sci. Rev.* 510 (1948).

[24] For efforts in other Southern States, see Weeks, *supra* note 23.

[25] S.C. Acts, 1944, 2323.

[26] S.C. Const. art. 2, sec. 10.

[27] 72 F. Supp. 516 (E.D.S.C. 1947); 165 F. 2d 387 (4th Cir. 1947), *cert. denied*, 333 U.S. 875 (1948).

[28] Rice v. Elmore, 165 F. 2d 387, 388 (4th Cir. 1947).

[29] *Id.* at 387–89.

Hence, "no election machinery can be upheld if its purpose or effect is to deny to the Negro on account of his race or color, any effective voice in the government of his country or the State or community wherein he lives.[30]

Still unyielding, the Democratic Party authorities of South Carolina sought to evade the *Elmore* decision by vesting control of primaries in clubs from which Negroes were barred, and by requiring of one who desired to vote in the primaries an oath, which was particularly objectionable to Negroes, stipulating among other things that he believed in the social and educational separation of the races. This effort failed in both the district court [31] and the court of appeals [32] on the strength of the principle enunciated in the *Elmore* case.

That principle was approved and applied by the Supreme Court of the United States in *Terry v. Adams* [33] in 1953. Here Fort Bend County, Tex., had for more than 50 years deprived Negroes of the ballot by setting up an "association" that included all white voters on the official list of the county and barred Negroes from membership. This organization, known as the Jaybird Democratic Association, claimed to be only a voluntary, private club with no connection whatever with the State political or elective machinery. Its ostensible duty was merely to pick candidates for recommendation to the regular party primary. Expenses were met by assessing the candidates, and no reports or certification of candidates were made to any State or party officials. Here Justice Black declared that the facts and findings brought the case squarely within the reasoning and holding of the Court of Appeals of the Fourth Circuit in the *Elmore* case, in which the principle had been laid down that no election machinery could be upheld if its purpose or effect was to deny Negroes on account of their race an effective voice in the governmental affairs of their country, State, or community.[34] Indeed, as already pointed out, essentially the same principle had previously been enunciated in *Smith v. Allwright* when the Supreme Court said that the constitutional right to be free from racial discrimination in voting "is not to be nullified by a State through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election." [35]

Thus, as George W. Spicer comments, "a State cannot escape the responsibility for unconstitutional discrimination by delegating

[30] *Id.* at 392.
[31] Brown v. Baskin, 78 F. Supp. 933 (E.D.S.C. 1948).
[32] Baskin v. Brown, 174 F. 2d 391 (4th Cir. 1949).
[33] 345 U.S. 461 (1953).
[34] Rice v. Elmore, 165 F. 2d 387, 392 (4th Cir. 1947).
[35] 321 U.S. 664.

power to accomplish this purpose to a private organization or by taking any action which permits a private organization to accomplish such a purpose. The State may not become actively identified with nor materially aid a private scheme of racial discrimination." [36]

Alabama refused to follow the example of South Carolina, apparently through fear that primary elections could not be properly policed without State regulation. Instead, the State sought to limit registration and, consequently, voting to "properly qualified persons." In 1946 the so-called Boswell amendment to the constitution of Alabama provided that only those persons can qualify as electors who can "understand and explain" any article of the Constitution of the United States, who are possessed of "good character," and who understand "the duties and obligations of good citizenship under a republican form of government." [37]

The amendment, however, was held unconstitutional by the Federal district court in *Davis v. Schnell* [38] on the ground that it was "intended as a grant of arbitrary power in an attempt to obviate the consequences of the *Smith v. Allwright*" decision [39] which invalidated the white primary system in the Southern States. The Supreme Court refused to overrule the Federal district court's decision.[40]

An amendment to section 181 of the Alabama constitution was made in 1951, designed to cure the weaknesses of the earlier Boswell amendment. In effect today, it requires voting applicants to be able to read and write "any article of the Constitution of the United States in the English language, which may be submitted to them by the board of registrars." They must also be of "good character," "embrace the duties and obligations of citizenship under the Constitution of the United States and under the constitution of the State of Alabama," and to answer a written questionnaire which is designed to aid boards of registrars to pass upon the qualifications of each applicant.

To summarize, the preceeding cases taken as a whole substantiate the proposition that actions taken by clubs, groups, or organizations cannot be considered private actions when they control the choice of public officials and the right of qualified citizens to participate freely in the exercise of their franchise.

ARTICLE I

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[36] Spicer, *op. cit. supra* note 15, at 116.
[37] Alabama constitution, sec. 181, as amended in 1946.
[38] 81 F. Supp. 872 (1949).
[39] 321 U.S. 649 (1944).
[40] Schnell v. Davis, 336 U.S. 933 (1949).

As the first exercise of its power to regulate the times and manner of holding elections for Senators and Representatives, Congress in 1842 passed a law requiring that Representatives be elected by districts.[41] Further legislation, passed in 1866, required that the two houses of State legislatures meet in joint session on a certain day and then meet every day thereafter to vote for a Senator until one was elected.[42] This was prompted by the many deadlocks that occurred between the two houses of State legislatures over the election of Senators. It was not until Reconstruction, however, that the Congress, choosing to exercise extensively its powers under article I, section 4, passed the comprehensive Enforcement Act of 1870 and kindred measures.[43] These statutes spelled out a detailed program for control of elections of Congressmen.

It was made a Federal offense to register falsely, vote without legal right, make false returns of votes cast, or bribe or interfere in any manner with officers of elections. It was also a Federal offense for any officer of elections to neglect duties imposed and required by State or Federal law. It was further provided that Federal judges might appoint persons to attend places of registration and election, armed with authority to challenge any individual proposing to register or vote unlawfully. These persons were to witness the counting of votes, and to identify the voters by their signatures on the registration and tally sheets.

In 1894, Congress repealed [44] the portions of this Reconstruction legislation dealing specifically with elections but left effective the portions relating to civil rights generally.[45]

The constitutionality of these laws was challenged a number of times before 1900. As a result of these challenges and resultant court interpretation, the following observations are warranted:

1. Congress need not assume the entire regulation of elections for Senators and Representatives but can make partial regulations to be carried out in conjunction with the States. This means that regulations regarding elections may be made either wholly by State legislatures, wholly by Congress, or partially by both. This concurrent authority is analogous to the regulation of interstate commerce by Congress. The laws made by Congress supersede those made by the States "so far as the two are inconsistent and no farther." [46]

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[41] 5 Stat. 491 (1842). Prior to the passage of this legislation a number of States had sought to aid a particular political party by electing all of their Representatives on a general ticket.

[42] 14 Stat. 243 (1866).

[43] 16 Stat. 144 (1870); 16 Stat. 254 (1870); 17 Stat. 347–349 (1872). The Act of May 31, 1870 was amended by the act of February 28, 1871.

[44] 28 Stat. 36 (1894).

[45] Reconstruction legislation that was not repealed has been invoked on numerous occasions to prosecute election offenses interfering with rights of voters as guaranteed by art. I, sec. 2.

[46] *Ex parte* Siebold, 100 U.S. 371, 386 (1879).

2. Enforcement of article I, section 4, may involve two sets of sanctions: (a) The States may enforce their own regulations, and (b) Congress may both punish delinquency of Federal officers and restrain persons who attempt to interfere with the performance of their duties. Since Congress may impose additional penalties for interferences committed by State election officials or for violation by such officials of duties under State as well as national laws, State officials may have a duty to the United States as well as to the State to obey the State laws.[47]

3. Congress is empowered under article I, section 4, to enact legislation protecting a voter from personal violence or intimidation, and the election itself from corruption and fraud.[48]

4. Federal officers and employees who solicit or receive contributions to procure the nomination of a particular candidate in a State primary election may be punished pursuant to article I, section 4.[49]

5. The right of the Federal Government to regulate primary elections conducted under State law for the nomination of Members of Congress is now settled where such primaries are effectively made or sanctioned under State law as "an integral part of the procedure of choice or where in fact the primary effectively controls the choice . . ." [50]

While it is true that Congress has required the election of Representatives by districts, it has left to the States the right to define the areas from which Members should be chosen. Some disputes have arisen concerning the validity of action taken by the States in setting up districts or in failing to redistrict. However, the courts have indicated that the power to set up districts is a function that is legislative in character. Thus it is similar to any other legislative enactments passed pursuant to the terms of a State constitution.[51]

Congress enacted a law in 1911 [52] requiring congressional districts to be composed of contiguous and compact territories containing as nearly as practical an equal number of inhabitants. However, the Reapportionment Act of 1929 [53] omitted such requirements. As a result, certain States have created districts having blatantly unequal populations. They have also legislated other methods to assure that votes in rural areas count more than those coming from urban areas.

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[47] See *ex parte* Siebold, *ibid,* and *ex parte* Clark, 100 U.S. 399 (1879), and United States v. Gale, 109 U.S. 65 (1883). Congress may adopt the statutes of the States and enforce them by its own sanctions to the end of protecting voters from intimidation or violence, and to see that corruption and fraud does not interfere with the election itself. *In re* Coy 127 U.S. 731, 752 (1888).

[48] *Ex parte* Yarbrough, 110 U.S. 651, 661 (1884); United States v. Mosley, 238 U.S. 383 (1915); United States v. Saylor, 322 U.S. 385 (1944).

[49] United States v. Wurzbach, 280 U.S. 396 (1930).

[50] United States v. Classic, 313 U.S. 299, 318 (1941).

[51] See Smiley v. Holm, 285 U.S. 355 (1932); Koenig v. Flynn, 285 U.S. 375 (1932); Carroll v. Becker, 285 U.S. 380 (1932).

[52] 37 Stat. 13, 14 (1911).

[53] 46 Stat. 21 (1929).

Such devices have been attacked as unconstitutional in that they did not allow voters of the more populous districts or urban areas their full right to vote and to equal protection of the laws. The Supreme Court has responded that such issues were not justiciable because they involved political matters, and that the courts therefore should not exercise jurisdiction.[54]

In *Colegrove* v. *Green*,[55] Mr. Justice Frankfurter in 1946 observed:

> Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress.

In *MacDougall v. Green*,[56] the Court said:

> It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States.

CONSTITUTIONAL ASPECTS OF THE POLL TAX

There are now only five States that make the payment of a poll tax a prerequisite to voting—Alabama, Arkansas, Mississippi, Virginia, and Texas. Such requirements in their original purpose were doubtless designed to disfranchise the Negro, but in later years they often operated to disfranchise whites as well. On the national level, efforts to eliminate the poll tax as a suffrage requirement have been confined largely to two methods: (1) invalidation by the Courts and (2), failing in this, the outlawry of the tax by act of Congress. Each of these methods will now be examined briefly.

The contention that a poll tax as a qualification for voting in a State or Federal election is unlawful was brought before the Supreme Court in 1937, in *Breedlove v. Suttles*.[57] The plaintiff had been excluded from both State and National elections because of failure to pay a poll tax imposed by the State of Georgia. Against the con-

[54] See South v. Peters, 89 F. Supp. 672 (1950). *Aff'd* 339 U.S. 276 (1950). Cox v. Peters, 342 U.S. 936 (1952); Wood v. Broom, 287 U.S. 1 (1932). Hartsfield v. Bell, 357 U.S. 916.

The Supreme Court itself, however, has been split on this issue. The minority view can be found in the following succinct statement of Justice Black, dissenting in Colegrove v. Green, 328 U.S. 549, 556, 570–571 (1946): "While the Constitution contains no express provision requiring that congressional election districts established by the States must contain approximately equal populations, the constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that State election systems, no matter what their form, should be designed to give approximately equal weight of each vote cast. * * * legislation which must inevitably bring about glaringly unequal representation in the Congress in favor of special classes and groups should be invalidated, 'whether accomplished ingeniously or ingenuously.'"

[55] 328 U.S. 549, 556 (1946).

[56] 335 U.S. 281, 284 (1948).

[57] Breedlove v. Suttles, 302 U.S. 277 (1937).

tention of Breedlove that the privilege of voting for Federal officials is one to which he was entitled under the Fourteenth Amendment, the Court concluded that to make the payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment.

Later cases [58] involving the poll tax as a requirement for voting regard the matter as conclusively determined in *Breedlove v. Suttles.*

FEDERAL ANTI-POLLTAX LEGISLATION

Since 1939 more than a half dozen bills designed to prohibit the requirement of a poll tax for voting in a primary or other election for national officers have passed the House of Representatives but have failed in the Senate either through death in committee or senatorial filibuster—chiefly the latter. All of these bills are virtually identical in substance. A typical example is the one introduced by Senator Humphrey [59] on June 25, 1951. Section 3 of this bill would make it unlawful "to levy, collect, or require the payment of any poll tax" as a condition of voting in any national election. It further declares that any such action "shall be deemed an interference with the manner of holding such elections, an abridgment of the right and privilege of citizens of the United States to vote" for national officers "and an obstruction of the operations of the Federal Government."

Most of the debate on this series of anti-polltax bills has centered about their constitutionality. Those who deny the constitutionality of this legislation base their case largely on section 2 of article I of the Constitution, and on court decisions respecting the qualifications of electors in national elections as subject to the limitations of the Fifteenth and Nineteenth Amendments.

As early as 1884, the Supreme Court of the United States in *Ex parte Yarbrough* [60] declared that the States "define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualifications thus furnished as the qualifications of its own electors for Members of Congress." [61]

The alleged competence of the Congress to prohibit State poll tax requirements in national elections is grounded upon a variety of arguments, the principal of which are (1) that the requirement of a poll tax is not a "qualification" in contemplation of section 2, of article I of the Constitution and (2) that even if the tax is a "qualification" under this action, it is limited by section 4 of article I.

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[58] Pirtle v. Brown, 118 F. 2d 218 (6th Cir.), *cert.* denied, 314 U.S. 621 (1941); Butler v. Thompson, 97 F. Supp. 17 (E.D.Va), *aff'd per curiam* 341 U.S. 937 (1951).

[59] S. 1734, 82d Cong., 1st sess. (1951).

[60] 110 U.S. 651 (1884).

[61] *Id.* at 663.

Those who advance the first argument assert that the poll tax is only a means, and an unconstitutional one, of denying a fundamental right. Thus the power of Congress to outlaw the poll tax is brought under section 4 of the article I. If Congress should act under its power to regulate the time, manner, and places of electing Federal officials, it is asserted that *Breedlove* and other cases would no longer be significant, since Congress has not yet legislated on the question as it relates to the manner of holding elections.[62]

The debate on these bills would thus seem to indicate that the constitutionality of Federal anti-polltax legislation is at least doubtful. Finally, it may be noted that the poll tax is not as serious a restriction as it once was, for it is difficult to administer so as to bar Negroes alone from the ballot box. Any administrative procedure by which the tax would be exacted from the Negro alone would most certainly be invalidated by the Federal courts.

FOURTEENTH AMENDMENT

Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. * * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The most significant substantive section in the Fourteenth Amendment respecting voting is the first. This defines citizenship and then imposes restrictions upon the States through what are commonly known as the privileges and immunities, due process, and equal protection clauses. While the Fourteenth Amendment is less precise than the Fifteenth in protecting the voting privilege, it has been used on numerous occasions to strike down State action that has caused discrimination between members of different races who attempt to vote.

[62] See S. Rept. 530, 78th Cong., 1st sess. (1943) (III Sen. Misc. Rept. 2–3).

To understand fully the import of the Fourteenth Amendment in the area of voting, it is necessary to know its precise coverage.

THE CONCEPT OF CITIZENSHIP

1. Persons are citizens of the United States who, if subject to the jurisdiction of the United States, are born in the United States or born abroad of American parentage; or who become citizens by qualifying for it in accordance with naturalization statutes; or whose citizenship is thrust upon them, such as members of certain Indian tribes and inhabitants of certain dependencies of the United States.[63]

2. The Fourteenth Amendment recognizes and establishes a distinction between U.S. citizenship and State citizenship. For a citizen of the United States to be a citizen of a State he must reside in that State with a fixed intent to remain resident. Birth or naturalization in the United States does not alone confer State citizenship.[64]

3. While national citizenship was not created by the Fourteenth Amendment, it was therein made "paramount" to State citizenship.[65]

4. National citizenship is not a qualification for voting in the absence of State constitutional or statutory requirements, so that a person could be a citizen of a State, thereby complying with residential voting requirements, yet not be a citizen of the United States.[66]

PRIVILEGES AND IMMUNITIES

1. The privileges-and-immunities clause is the only provision of the first section of the Fourteenth Amendment confined exclusively to citizens rather than persons generally.

2. As a source of power to protect the franchise, the privileges-and-immunities clause has been rendered ineffective by interpretation. The courts have held that it only forbids a State to discriminate against citizens of other States in favor of its own. The clause has not been applied to voting controversies between a State and its citizens. In short, it does not convert the rights of the citizens of each State, as of the date when the Fourteenth Amendment was adopted, into privileges and immunities of U.S. citizenship.

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[63] Prior to the adoption and ratification of the Fourteenth Amendment, the Constitution contained no definition either of State or National citizenship. The Civil Rights Act of 1866 (14 Stat. 27), enacted 2 years prior to the Fourteenth Amendment, had declared that all persons born in the United States and not subject to a foreign power, excluding Indians not taxed, were citizens of the United States. The Fourteenth Amendment, the second of the so-called Civil War amendments, became effective on July 28, 1868. It removed all doubt as to the legality of the Civil Rights Act of 1866 and superseded the decision of the Supreme Court in Dred Scott v. Sandford, 60 U.S. 393 (1857), which had denied United States citizenship to a Negro even though he had been born in the United States and had been descended from a Negro residing as a freeman in one of the States when the Constitution was adopted. The ruling in this case had been that the Negro was ineligible to attain U.S. citizenship either from a State or by virtue of birth in the United States.

[64] *Slaughter-House Cases*, 83 U.S. 36 (1873).

[65] Arver v. United States (Selective Draft Law Cases) 245 U.S. 366, 377, 388–389 (1918)

[66] Baker v. Keck, 13 F. Supp. 486. McDonel v. State, 90 Ind. 320 (1883).

As stated in Edward S. Corwin's basic work on the Constitution of the United States,[67] the only privileges that the Fourteenth Amendment expressly protects against State encroachment are those "which owe their existence to the Federal Government, its National Character, its Constitution, or its Laws." [68]

3. In Twining v. New Jersey,[69] the Court listed the following privileges and immunities as applying to U.S. citizens and, contrary to the allegations of litigants, not to those of State citizenship:

the right to pass freely from State to State;
the right to petition Congress for redress of grievances;
the right to vote for national officers;
the right to enter public lands;
the right to be protected against violence while in the lawful custody of a U.S. marshal;
the right to inform the U.S. authorities of violations of its laws.

4. The protection of the franchise under the privileges-and-immunities clause of the Fourteenth Amendment is slight. State action has been upheld against the charge of abridgment of this clause where it required that persons coming into the State make a declaration of intention to become citizens and residents thereof before being permitted to register as voters;[70] where payment of poll tax was made a prerequisite of the right to vote;[71] where the right to become a candidate for State office was involved;[72] and where there were established ostensibly unrealistic State requirements concerning formation and nomination of candidates for a new political party.[73]

EQUAL PROTECTION OF THE LAWS

1. The prohibition against denial of equal protection of the laws refers exclusively to State action. This means that no agency or instrumentality of the State nor any person exerting State power may

[67] Edward S. Corwin, *The Constitution of the United States, Analysis and Interpretation,* U.S. Government Printing Office, 1953, p. 996, citing the Slaughter-House Cases.

[68] *Slaughter-House Cases,* 83 U.S. 36 (1873) 79, citing the case of Crandall v. Nevada, 73 U.S. 35 (1868) which was decided before ratification of the Fourteenth Amendment. Corwin summarizes the rights of citizens protected by implied guaranties of the Constitution as listed by the Court in the above cases: "Right of access to the seat of government, and to the seaports, subtreasuries, land offices, and courts of justice in the several States; right to demand protection of the Federal Government on the high seas, or abroad; right of assembly and privilege of the writ of *habeas corpus;* right to use the navigable waters of the United States; and rights secured by treaty" (Corwin, *supra* at 967). Since these were privileges available to U.S. citizens even prior to the adoption of the Fourteenth Amendment, with which no State could interfere due to the principle of Federal supremacy, this interpretation reduced to insignificance the privileges-and-immunities clause of the Fourteenth Amendment (Corwin, *supra* at 966). It may well be, however, that had the case involved protection against infringements based upon race, color, creed, or national origin rather than a grant of business monopoly, a different result would have obtained. The Supreme Court itself indicated this possibility.

[69] 211 U.S. 78, 97 (1908).

[70] Pope v. Williams, 193 U.S. 621 (1904).

[71] Breedlove v. Suttles, 302 U.S. 277 (1937).

[72] Snowden v. Hughes, 321 U.S. 1 (1944).

[73] MacDougall v. Green, 335 U.S. 281 (1948).

deny equal protection to any person within the jurisdiction of the State. This refers both to discriminatory legislation in favor of particular individuals as against others in like condition, and to the way a law is administered.[74]

2. Unlike the privileges-and-immunities clause, the equal-protection clause provides a guaranty to any person within the jurisdiction of a State. It is not limited to citizens of the United States or of a State.[75]

3. The equal-protection clause applies to all persons—individual, corporate, or otherwise—within the jurisdiction of a State. The restriction of "within the jurisdiction" in relation to individual persons has never required judicial construction, since article 4, section 2, of the U.S. Constitution has always entitled citizens of each State to the privileges and immunities of citizens in the several States.[76]

4. The clause does not require that identical treatment be accorded all persons without recognizing differences in relevant circumstances. It requires only that equal laws shall apply to all under like circumstances in the enjoyment of personal and civil rights, in acquisition and enjoyment of property, and in access to the courts. It is intended to prevent undue favor, individual or class privilege, and hostile discrimination or oppression.[77]

5. It was not intended to interfere with a State's power, sometimes called police power, to prescribe regulations dealing with health, morals, education, peace, or to legislate for the purpose of increasing the industry, health, and prosperity of the state. This type of regulation may impose greater burdens upon some than on others, but it is designed to promote the general good rather than impose unequal or unnecessary restrictions upon any person. If these differences operate alike on all persons and property under the same circumstances and conditions, they do not violate the equal-protection clause.[78]

6. While State legislatures are allowed wide latitude in classifying for different purposes, they may not select certain individuals arbitrarily for the operation of statutes. However, there is a strong presumption that ostensibly discriminatory legislative classification is based on reasonable and adequate grounds.[79]

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[74] Corwin, *op cit. supra* note 67, at 1141, citing Virginia v. Rives, 100 U.S. 313, 318 (1880). Minneapolis & St. L.R. Co. v. Beckwith, 129 U.S. 26, 28 (1889). Yick Wo v. Hopkins, 118 U.S. 356, 373–374 (1886).

[75] Corwin, *op cit. supra* note 67, at 1143. Initially, the Supreme Court indicated doubt as to whether State discriminatory action not directed against Negroes as a class, on account of their race, would ever come within the purview of this clause. See Slaughter-House Cases, *op. cit. supra* note 68, at 81. However, this view was never enforced. A broad interpretation has prevailed so that the clause applies to all persons within a State without being limited to protect only certain persons of a particular race, color, or nationality. See Yick Wo v. Hopkins, *supra,* note 74, at 369.

[76] Corwin, *op cit. supra,* note 67, at 1143; cf. Hillsborough v. Cromwell, 326 U.S. 620 (1946).

[77] *Id.* at 1144–5; Truax v. Corrigan, 257 U.S. 312, 332–333 (1921).

[78] *Id.* at 1144–5; Barbier v. Connoly, 113 U.S. 27, 31–32 (1885).

[79] *Id.* at 1145; Bachtel v. Wilson, 204 U.S. 36, 41 (1907). Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911). Middleton v. Texas Power and Light Co., 249 U.S. 152, 157 (1919).

7. The equal-protection clause does not require that all occupations called by the same name must be treated the same way. The State has discretion to stop short of covering with legislation all conditions it might have covered, and to except specific classes from certain laws if reasonable grounds are given.[80] In short, there is no basis for claiming denial of equal protection because a particular statute does not go further, provided that the statute has a reasonable basis and that what it commands of one it commands of all others similarly situated.[81]

THE FIFTEENTH AMENDMENT

> *Section 1.* The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> *Section 2.* The Congress shall have power to enforce this article by appropriate legislation.

The Fifteenth Amendment, ratified in 1870 as the third of the so-called Civil War amendments, is a principal source of substantive Federal protection in the area of voting. It affords to every citizen a right to be free from discrimination in voting because of race, color, or previous condition of servitude.

From one point of view the Fifteenth Amendment operates "as an immediate source of a right to vote." [82] By this is meant, for example, that should a State by constitution or statute limit voting to "white" persons only, the Fifteenth Amendment would annul the discriminating word "white." In this sense the Fifteenth Amendment confers on the nonwhite the right to vote, provided he is otherwise qualified. Congress is empowered to protect and enforce that right.

LIMITATIONS

While the Fifteenth Amendment is precise in protecting the franchise, the scope of its protection is limited.

First, it does not directly confer the right of suffrage upon anyone, but rather affords to citizens the constitutional right of "exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude." [83]

Second, it recognizes (*a*) that the right of suffrage is not a necessary attribute of national citizenship, (*b*) that voting qualifications are determined by States, and (*c*) that only exemption from discrimination comes from the United States.[84]

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[80] Corwin, *supra,* 1146; Dominion Hotel v. State of Arizona, 249 U.S. 265, 268 (1919). Phelps v. Board of Education, 300 U.S. 319, 324 (1937).

[81] Chicago Dock and Canal Co. v. Fraley, 228 U.S. 680, 687 (1913).

[82] *Ex parte,* Yarbrough, 110 U.S. 651, 665 (1884); see Corwin, op. cit. *Supra* note 67, at 1183.

[83] United States v. Reese, 92 U.S. 214 (1876); Minor v. Happersett, 21 Wall 178 (1875).

[84] United States v. Cruikshank, 92 U.S. 542 (1876).

Third, its limitations apply only to action of a State or the United States and not to individual action, even though such action might result in denying to an individual his right of suffrage because of race, color, or previous condition of servitude.[85]

Fourth, even where there is action by a State that prevents a citizen, black or white, from voting, there is no violation of the Fifteenth Amendment unless the action is taken because of the voter's race, color, or previous condition of servitude.[86]

Fifth, while initially it seems to have been assumed that Congress did not intend the legislation it enacted pursuant to this amendment to apply to State and local elections,[87] it now is applied to elections for State as well as for Federal offices.[88]

LITERACY TEST

A significant use of the Fifteenth Amendment has been to circumscribe the application of literacy tests which are ostensibly intended to determine whether the prospective voter is qualified to make an informed political choice.

Mississippi's literacy test, which was typical of those then in effect, was indirectly sustained in 1898 by the Supreme Court in *Williams* v. *Mississippi*.[89] Since it did not on its face discriminate against Negro voters and there was no showing that it had been administered for this purpose, it was held to be not in violation of the Fifteenth Amendment.

Until 1915, restrictions on Negro suffrage continued to meet with little interference from the Supreme Court.[90] In that year the Oklahoma "grandfather clause" was struck down by the Court in *Guinn* v. *United States* [91] as a violation of the Fifteenth Amendment. This ingenious device was similar to others that had been earlier adopted in some half dozen other southern States. The clause set up a literacy test based on the ability to read and write any section of the Oklahoma constitution. It then provided a loophole for the escape of illiterate whites by exempting those whose ancestors were qualified to vote as

[85] Corwin, *op. cit. supra* note 67, at 1186. United States v. Reese, 92 U.S. 214 (1876); United States v. Amsden, 6 Fed. 819, 822–23 (D. Ind. 1881).

[86] United States v. Amsden, *supra;* James v. Bowman, 190 U.S. 127 (1903).

[87] James v. Bowman, *supra,* at 142.

[88] Chapman v. King, 154 F. 2d. 460 (5th Cir, 946). *Cert. denied,* 327 U.S. 800 (1946). The Court noted that the statute, 42 U.S.C. 1971(a) enacted pursuant to the Fifteenth Amendment, "makes no difference between elections touching State offices and those touching Federal offices, but applies in terms to all elections by the people, and the Fifteenth Amendment, to enforce which the statute was made, is broad enough to include them all." It should be observed, however, that this case involved denial of the right to vote at an election in which nominees for the U.S. Senate and House of Representatives, as well as for State offices in Georgia, were being chosen.

[89] 170 U.S. 213 (1898). See Corwin, *op. cit. supra* note 67, at 1185–86.

[90] But see *Ex parte* Yarbrough 110 U.S. 651 (1884).

[91] 238 U.S. 347 (1915). See Corwin, *op. cit. supra* note 67, at 1184.

of January 1, 1866—a date when no Negro in the State was qualified to vote. This made it clear, the Court held, that Oklahoma's "grandfather clause" had racial discrimination in voting for its purpose.

The following year, the State sought to achieve the same purpose through a "sophisticated" registration procedure. The new suffrage law, enacted by The Oklahoma Legislature in 1916, provided that persons who had voted in the general election of 1914, held under the invalid "grandfather clause," were automatically placed on the register of voters for life. All other voters were required to register within a specified 12-day period or be permanently disfranchised. In an action brought by a Negro citizen who was refused the right to vote in 1934 because he had failed to register within this prescribed period in 1916, the Court held this registration scheme to be racial discrimination in violation of the Fifteenth Amendment.[92] Said Justice Frankfurter for the Court:

> [This Amendment] nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race.

THE SEVENTEENTH AMENDMENT

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

This Amendment, ratified in 1913, substituted direct popular election of U.S. Senators for the original constitutional method of selection by State legislatures.[93]

It had previously ruled that one's right to vote for Members of the House of Representatives was derived from and secured by the Constitution of the United States,[94] now the Supreme Court similarly declared that if a person possessed the qualifications requisite for voting for a Senator, his right to vote for such an officer was not merely derived from the constitution and laws of the State but was grounded in the Constitution of the United States.[95] On the basis of

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[92] *Lane* v. *Wilson*, 307 U.S. 268 (1939). See Corwin, *op. cit. supra* note 67, 1184.

[93] Practical disadvantages and improprieties involved in legislative selection of Senators had become highly unpopular. Vacancies remained unfilled for substantial periods due to deadlock within legislatures. Evidence of insidious and corrupt activities, including purchase of legislative seats, had begun to mount.

Prior to ratification of the Seventeenth Amendment a number of States had not only made efforts, but had instituted procedures designed to afford the voters more effective control over the selection of Senators. In fact, by 1912 at least 29 States were effectively nominating Senators on a popular basis, so that the discretion of the legislators had been curtailed severely. Corwin, *op. cit. supra* note 67, at 1203.

[94] *Ex parte* Yarbrough, 110 U.S. 651 (1884).

[95] United States v. Aczle, 219 F. 917 (1915).

this premise, it has been held that when local party authorities refused to permit a Negro, on account of his race,[96] to vote in a primary election for the office of U.S. Senator, they deprived him of a right secured to him by the Constitution and laws in the Seventeenth Amendment.

CIVIL AND CRIMINAL STATUTES

Not until 1870 did Congress utilize, in a significant manner, its constitutional right to legislate in the election field. As noted earlier, most of the provisions of the Civil Rights Act of 1870 [97] were subsequently repealed or held unconstitutional. Nonetheless, it is the taproot from which spring most of the present Federal election laws.

The following civil and criminal remedies, provided by Congress to protect suffrage rights, are operative today:

(1) Criminal penalties can be assessed against any person who seeks to intimidate a person in the exercise of his voting rights.[98]

(2) Civil sanctions are available to protect suffrage rights from infringement through conspiracies.[99] If two or more persons conspire to prevent by any means one lawfully entitled to vote from voting in an election to select presidential electors, the person so deprived has an action for damages against the conspirators.[1]

(3) Criminal sanctions cover conspiracies to injure, oppress, or intimidate citizens in the exercise of federally secured rights and privileges.[2] They also cover the willful subjection of any inhabitant under color of law to the deprivation of rights, privileges, or immunities secured by the U.S. Constitution and laws, or to discriminatory pains and punishments on account of race, color, or alienage.[3] These statutes have been used commonly in the voting area.

(4) The Civil Rights Act of 1957 is concerned directly with the elective franchise.[4] Section 1971(a), derived from the Civil Rights Act of 1870, declares that all citizens otherwise qualified shall be allowed to vote without regard to race, color, or previous condition of servitude.[5] Section 1971 was amended by the Civil Rights Act of 1957, which added four provisions, in substance as follows:

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[96] In this case the local party authorities acted pursuant to regulations prescribed by a party's State executive committee. Corwin, *op. cit. supra* note 67, at 1208.
Chapman v. King, 154 F. 2d 460 (1946); *certiorari denied*, 327 U.S. 800 (1946).
[97] 16 Stat. 140.
[98] 18 U.S.C., sec. 594 (1952).
[99] 42 U.S.C., sec. 1985(3) (1952).
[1] While 42 U.S.C. 1985(3) (1952) has been invoked extensively in its broader application to conspiracies to deprive a person of other civil rights, it has rarely been used in protecting voting rights.
[2] 18 U.S.C. 241.
[3] 18 U.S.C. 242.
[4] 42 U.S.C. 1971.
[5] This section has been sustained as a valid exercise of congressional power under the Fifteenth Amendment. *In re* Engle, Fed. Cas. No. 4488 (C.C.D., Md. 1877).

(1) Section (b) declares that no person shall intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce, another for the purpose of interfering with his right to vote in any election in which a Federal officer is to be selected.[6]

(2) Section (c) gives to the Attorney General of the United States power to institute, for or in the name of the United States, any civil action or proper proceeding for preventive relief, whenever any person had deprived or is about to deprive another of rights secured in sections (a) and (b).[7]

(3) Section (d) gives to the Federal District Court jurisdiction of proceedings instituted under Section (c). Of consequence is the provision that the Federal Court should entertain such proceedings without requiring that the party aggrieved first exhaust his State administrative or other remedies.

(4) Section (e) establishes contempt proceedings and provides for the rights of individuals cited for contempt of an order issued in an action instituted under Section 1971.

In the absence of section 1971 the existing Federal statutes pertaining to voting afford less than complete protection. For example, 1971(a), which contains the declaration of voting rights, makes the criminal sanctions[8] more specifically applicable to voting and thus more effective. The civil sanction, which seeks to protect suffrage rights from infringement through conspiracies, is limited in its application to elections to select presidential electors.[9] The criminal penalties that can be assessed against persons who intimidate others in the exercise of their voting rights purport to apply to any election.[10] But by definition primary elections or conventions of a political party are excluded.[11] Thus only when section 1971, which does include primaries, is combined with the criminal sanctions contained in sections 241 and 242 can prosecuting authorities reach proscribed election activities which occur in a primary election.

Section 1971(a), which states that all citizens otherwise qualified shall be allowed to vote without regard to race, color or previous condition of servitude, is a valid exercise of congressional power under the Fifteenth Amendment. It extends the power of Congress to elections in which State or Federal officials are to be selected.[12] To the extent that the conduct relied upon to establish a deprivation of the right to vote is attributable to the State or Federal Government, and not to private individuals, there can be no question as to the validity of this section.

Section 1971(b) employs language regarding intimidation of voters paralleling that statute which assesses criminal penalties for such

[6] This provision specifically includes general, special, and primary elections and declares that the action need not be taken under color of law to constitute the conduct prohibited.

[7] The potentialities inhering in this section are considered in 71 *Harv. L. Rev.*, 573 (1958).

[8] 18 U.S.C. 241, 242.

[9] 42 U.S.C., sec. 1985(3) (1952).

[10] 18 U.S.C., sec. 594 (1952).

[11] 18 U.S.C., sec. 591 (1952) sets forth the definitions to cover that part of the criminal code dealing with elections.

[12] Chapman v. King, 154 F. 2d 460 (5th Cir. 1946), *cert. denied* 327 U.S. 800 (1946).

acts.[13] However, it brings such action within the scope of the new injunctive remedy created by 1971(c). In short, section 1971, as amended by the Civil Rights Act of 1957, protects the rights to vote for State and local officials by use of the injunctive remedy and covers even threatened violations of the right to vote. On its face it appears to extend only to interference by State action; not private interference.[14]

A unique contribution to the field of voting protection is the device of allowing the United States through the Attorney General, to institute civil actions to protect private individuals from infringement of their right to vote. It appears to be the first time the Federal Government has been empowered to institute such civil actions in the field of civil rights.[15] It should be noted that the Attorney General may institute a suit, if in his sound discretion he deems it necessary to do so, without relying upon the consent of the individual whose rights have been infringed. Beyond that, the action may be brought in the Federal district court initially. This procedure may allow relief before it is too late; i.e., before the election is held. The import of this extension in the power of the Federal Government can only be theoretically analyzed at this point in the absence of positive judicial construction. In theory, however, it means that, where criminal convictions might not be secured, the United States may seek redress of wrongs against an individual who does not bring a civil action in his own behalf, whether the cause be indifference, intimidation, poverty, or any other reason.

[13] 18 U.S.C. 594 (1952).

[14] See, for example, 71 *Harv. L. Rev.*, 573–574 (1958); 56 *Mich. L. Rev.*, 619 (1958).

[15] It is by no means the first time the Federal Government has taken upon itself the obligations to protect the rights of private individuals through civil remedies. See, e.g., Sherman Antitrust Act, 15 U.S.C. 4 (1952); Fair Labor Standards Act, 29 U.S.C. 216(c) (1952); Emergency Price Controls Act of 1942, Appx. 925(a) (1952).

CHAPTER VIII. ENFORCEMENT: THE CIVIL RIGHTS DIVISION

Seeking to provide for a more effective enforcement of Federal civil rights statutes, the Congress in the Civil Rights Act of 1957 authorized appointment of an additional Assistant Attorney General. As anticipated, the new assistant was placed in charge of a new Civil Rights Division, which the Department of Justice organized in December 1957 to replace the Civil Rights Section of its Criminal Division.[1] The new Division's jurisdiction includes—

(1) the "civil rights" statutes, 18 U.S.C. 241, 242, 243, and 244;

(2) the Civil Rights Act of 1957;

(3) statutes relating to extortion and threats, obstruction of justice, peonage and slavery, misuse of search warrants, shanghaiing of sailors, merchant seamen, the escape and rescue of prisoners;

(4) statutes relating to election frauds, interference with the right to vote, the Hatch Act and Corrupt Practices Act.[1A]

The Civil Rights Division—

has responsibility for all legal and administrative questions and problems with respect to the application and construction of the Probation Act, the parole statutes, the Juvenile Delinquency Act, and the sentencing provisions of the Youth Corrections Act. The Division also has cognizance over all matters involving habeas corpus and the handling of problems relating to mentally defective defendants temporarily committed pending recovery.[2]

In addition, the Division maintains liaison with State law enforcement agencies to promote Federal-State cooperation as well as State action in the civil rights field, and collects factual information on civil rights developments.[3]

In the first half of fiscal 1958, the old Civil Rights Section of the Criminal Division received 712 new matters; during the second half of that year, the Civil Rights Division received 887 new complaints and cases.[4]

The Civil Rights Division is divided into three sections: Appeals and Research, General Litigation, and Voting and Elections.

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[1] The Truman Committee recommended nine years earlier that the Civil Rights Section be elevated to full division status under the supervision of an Assistant Attorney General in order to give the federal civil rights enforcement program greater prestige, power, and efficiency. (*To Secure These Rights,* Report of the President's Committee on Civil Rights, 1947, pp. 151–153.

[1A] Hearings before the Subcommittee of the Committee on Appropriations, Department of Justice, House of Representatives, 86th Cong., 1st sess., 1959, pp. 191–194.

[2] *Ibid.*

[3] *Ibid.*

[4] *Id.,* p. 192.

The Appeals and Research Section is responsible for all preparations, pleadings and oral arguments in connection with cases appealed to the circuit courts and makes recommendations regarding appeal action to the Solicitor General. The Section is also responsible for Civil Rights Division cases in the Supreme Court, making recommendations for or against certiorari or appeal to the Solicitor General and, under his supervision, drafting briefs and other pleadings. It also collects information regarding civil rights litigation in the United States; analyzes existing and proposed laws falling within the jurisdiction of the Civil Rights Division; and recommends changes in, or drafts new legislation. In the first 6 months of 1958 the Section participated in 50 court cases.[5]

The General Litigation Section is responsible for supervising the enforcement of all of the statutes within the jurisdiction of the Civil Rights Division except the election and voting statutes. This work includes investigation and legal assistance to United States Attorneys in the actual trial of cases. This Section operates through:

1. The Due Process Unit which is responsible for all matters and cases where there is an alleged denial of due process of law under the Fifth and Fourteenth Amendments, for enforcing Federal statutes covering peonage and slavery, merchant seamen, unlawful use of search warrants and the shanghaiing of sailors. During the first 6 months of operation, 72 percent of all new matters within the General Litigation Section were received by the Due Process Unit.

2. The Equal Protection Unit which is responsible for all complaints and cases involving an alleged denial of equal protection under the Fourteenth Amendment, for supervising enforcement of the Federal statute relating to the obstruction of justice, the Fugitive Felon Act, the statute prohibiting the exclusion of jurors on account of race or color, and cases of discrimination against persons wearing the uniform of the Armed Forces.

3. The Federal Custody Unit, which is responsible for legal and administrative questions arising from the time of the arrest of a Federal prisoner to his final discharge.[6]

The workload of this Section in the first half of 1958 amounted to 94 matters carried over from the previous year, 792 received and 552 terminated during the 6 months, and 334 pending on June 30.

The Voting and Elections Section is responsible for supervising the administration of the new remedies provided by the Civil Rights Act of 1957. Under this act the Attorney General can bring civil suits or other proceedings for preventive relief to obstruct certain types of interference with the right to vote. The Section may request the Federal Bureau of Investigation to conduct investigations and, on

[5] *Ibid.*

[6] *Id.*, pp. 192–193.

the basis of its information, decides when court action is necessary and takes part in such action. The Section also supervises the enforcement of Federal criminal statutes applicable to election frauds, interference with the right to vote, the Hatch Act and the Corrupt Practices Act. There were 17 matters pending on January 1, 1958, and 71 additional ones were received in the next 6 months. In the same period 43 were terminated, leaving 45 pending on June 30, 1958.[7]

The work of the Department of Justice in the field of civil rights is difficult to appraise.

The response of the Civil Rights Division to a request from this Commission for information regarding the number of racial voting complaints received by the Department during the past 5 years was as follows:

> Prior to December 9, 1957, the date on which the Civil Rights Division was constituted, records which were available from Department sources did not contain the specific information which you have requested unless the complaints resulted in prosecutions.
>
> During the 5-year period approximately 120 racial voting complaints were received by the Department. This figure relates to specific political subdivisions where registrars and other officials were accused of discriminatory practices rather than to the number of individual complaints of persons affected by the reported practices.
>
> The precise number of investigations which were made of these complaints is not presently available. It may safely be assumed, however, in line with the policy which has consistently been followed, that all complaints which stated prima facie violations of 18 U.S.C. 241 or 242 were investigated.[8]

The Department is currently analyzing and indexing its closed files on voting and election complaints, to include a breakdown of the nature of the complaints and the dates of their occurrence. In general, these complaints include allegations of discrimination against Negroes in administration of registration and literacy requirements, in evasive tactics such as closing registration offices and leaving the office of registrar vacant, and in the purging of registration rolls.[9]

The Justice Department is of the opinion that criminal remedies for voting violations are unsatisfactory and that their shortcomings "have long been recognized."

> * * * [T]he Department of Justice over the years has encountered serious difficulties in securing convictions for civil rights violations. Such prosecutive difficulties are compounded in cases of nonviolent racial discrimination, common to the voting field.[9A]

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[7] *Id.*, pp. 193–194.

[8] Letter from Joseph M. F. Ryan, Jr., Acting Assistant Attorney General, Civil Rights Division, to Dr. John A. Hannah, Chairman, Commission on Civil Rights, June 19, 1959.

[9] *Ibid.*

[9A] The files of the Truman Committee reveal that more than one resident of the South, including an Assistant U.S. Attorney, expressed to that Committee the opinion that securing convictions was not so all-important as it might seem, that even "unsuccessful" prosecutions, as well as occasional convictions, were of considerable value in preventing further violations of civil rights.

The legislation to increase the effectiveness of Department of Justice action in correcting deprivations of the right to vote was, of course, the Civil Rights Act of 1957. It authorized the use of civil remedies in voting cases as urged by former Attorney General Brownell in his testimony [before the Senate subcommittee in 1957].[10] Experience in the administration of this act has demonstrated the need for its implementation by a law giving access to registration records and requiring their retention.[11]

Illustrating the difficulty of securing indictments in such cases, the Department of Justice cited its experience with a Federal grand jury in the western district of Louisiana in 1956–57. The jury not only returned no indictments when evidence was presented that 1,400 qualified Negro voters in 3 parishes were illegally purged, but also chose not to hear the complete evidence respecting similar purging of approximately 4,700 qualified Negro voters in 3 additional parishes.[12]

The defendant in a civil rights case is often an influential citizen of his community, while his victim is normally the opposite. "It is a fair summary of history," Justice Frankfurter has remarked, "to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people." [13] "Washington interference" is the usual defense cry in a civil rights prosecution. Yet civil rights cases are usually prosecuted by the United States attorney, a native of the community, before a local district judge, after investigation by FBI agents who usually reside in the community, before a petit jury of "natives," after indictment by grand jurors from the area.

In the Civil Rights Act of 1957, the Congress sought to remedy these "prosecutive difficulties" of criminal sanctions by reinforcing and extending Federal *civil* powers to protect the franchise through injunction suits.

But in terms of securing and protecting the right to vote, the record of the Department of Justice's Civil Rights Division under the Civil Rights Act of 1957 is hardly more encouraging than it was before.

Nearly two years after passage of the Act, the Department of Justice had brought only three actions under its new powers to seek preventive civil relief—in Terrell County, Georgia; Macon County, Alabama; and Washington Parish, Louisiana. In a presentation to a subcommittee of the House Appropriations Committee it was revealed that of 32 Civil Rights Division cases pending in court at the end of fiscal 1958, only 7 were properly in the category of "civil rights" as that term is generally understood, 3 were in the field of

[10] The authorization of the use of civil remedies by the Department of Justice was also recommended by President Truman's Committee on Civil Rights. *To Secure These Rights*, the report of the President's Committee on Civil Rights, 1947, pp. 152, 160.

The Truman Committee files reveal that Attorney General Clark and another Department official favored giving the Justice Department such authority and that they considered civil actions especially appropriate for protecting the right to vote.

[11] Same as note 8, *supra*.

[12] *Ibid.*

[13] See Justice Frankfurter's dissent in *United States* v. *Rabinowitz*, 339 U.S. 56, 69 (1950).

voting and elections, and no more than 4 were racial cases.[14] During the same period, 11 civil rights cases were presented to grand juries and in 4 cases the jury returned a true bill.[15]

Some of the members of the subcommittee were apparently not impressed with the record of the Civil Rights Division. A large part of its energies, according to testimony, had been channeled into compiling statistics and compiling and digesting State election laws. With full allowance for the fact that the Division had deferred to State court action in Massachusetts, New York, and Pennsylvania where civil rights agencies exist, and in a few other States where the good faith of State officials was clear, its legal actions were disappointing in number, nature, and results.

The Terrell County (Ga.) action was dismissed on the ground that the relevant sections of the Act of 1957 are unconstitutional. Although the action had been brought against State officials in regard to registration for elections involving candidates for Federal office, the Federal District Judge rejected it on the ground that the Act provides—unconstitutionally, he thought—for action against private individuals, and in purely State or local elections.[16]

As noted in Chapter V of this section of the report, the Macon County (Ala.) action was brought against two registrars, and was dismissed because the registrars had resigned, leaving no party defendant.

At this writing, the Washington Parish (La.) action is still pending.

Thus the new Federal powers provided by the Act of 1957 have not been thoroughly tested.*

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*COMMISSIONER JOHNSON:

Section 131(c) of the Civil Rights Act of 1957 (42 U.S.C. 1971(c)) authorizes the Attorney General to "institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order" where "there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person" of the right to vote. The Commission's Report states that this grant of power to the Attorney General has not been fully tested, having been invoked three times. Yet our findings also show that in 16 counties where Negroes constitute a majority of the voting-age population there are *no* Negroes registered to vote. In 49 other counties where Negroes constitute a majority of the voting-age population, some, but fewer than *five* percent, of the voting-age Negroes are registered. The total absence of Negroes from the registration rolls or the registration of only a few in such counties in the writer's view warrants at least an investigation by the Department of Justice to ascertain whether there are not "reasonable grounds" to institute actions for the preventive relief authorized by the statute. Even if such investigations may be hampered by the inability to examine registration records, they should nonetheless be undertaken.

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[14] Hearings, pp. 206–211. See footnote 1A.

[15] *Id.*, p. 212.

[16] *U.S.* v. *Raines*, 172 F. Supp. 552 (M.D. Ga. 1959).

The Civil Rights Division attributes part of its difficulties in administering the 1957 Act to lack of access to local registration records. This Commission has also met with such difficulties. But even if a law were adopted to guarantee such access and even if the Attorney General should bring civil suits for preventive relief in a larger number of districts where there are presently "reasonable grounds to believe" that persons are being deprived of their right to vote, there is little reason to believe that such litigation would afford adequate relief.

The history of voting in the United States shows, and the experience of this Commission has confirmed, that where there is will and opportunity to discriminate against certain potential voters, ways to discriminate will be found. The burden of litigation involved in acting against each new evasion of the Constitution, county by county, and registrar by registrar, would be immense. Nor is any effective remedy available at present for a situation where the registrars simply resign.

If any State were to pass a law forthrightly declaring colored citizens ineligible to vote, the Supreme Court would strike it down forthwith as in flagrant violation of the Fifteenth Amendment. The trouble, however, comes not from discriminatory laws, but from the discriminatory application and administration of apparently nondiscriminatory laws.

Against the prejudice of registrars and jurors, the U.S. Government appears under present laws to be helpless to make good the guarantees of the U.S. Constitution.

CHAPTER IX

VOTING: FINDINGS AND RECOMMENDATIONS

The Problem

"To secure these rights," declared the great charter of American liberty, "governments are instituted among men, deriving their just powers from the consent of the governed." The instrument by which consent is given or withheld is the ballot.

Few Americans would deny, at least in theory, the right of all qualified citizens to vote. A significant number, however, differ as to which citizens are qualified. None in good conscience can state that the goal of universal adult suffrage has been achieved. Many Americans, even today, are denied the franchise because of race. This is accomplished through the creation of legal impediments, administrative obstacles, and positive discouragement engendered by fears of economic reprisal and physical harm. With those Americans who of their own volition are too apathetic either to register or, once registered, too apathetic to vote, this report does not concern itself. But with denials of the right to vote because of race, color, religion, or national origin, this Commission and the Congress of the United States are urgently concerned.

The studies of the Commission on Civil Rights reveal that many Negroes are anxious to exercise their political rights as free Americans and that they have made some progress. Our investigations have revealed further that many Negro American citizens find it difficult, and often impossible, to vote. An attempt has been made to gather and assess statistics and facts regarding denial of the right to vote. This task has required careful analysis and understanding of the legal impediments.

The Commission has sought to evaluate the extent to which there is an obligation on the part of the Federal Government to prevent denial of the right to vote because of discrimination by reason of color, race, religion, or national origin. This is what Congress asked. The scope of Federal power to protect the suffrage depends on whether interference comes from State and local officers or from private persons; or whether improper voting procedure alone is involved, or whether the interference is based on race or color, and on the nature of the election itself, whether State or national.

Article I, section 2, of the U.S. Constitution has long stood for the proposition that while the qualifications of electors of Members of Congress are governed by State law, the right to vote for such representatives is derived from the U.S. Constitution. Article I, section 4, authorizes Federal protection of voting in Federal elections against interference from any source. The Fourteenth Amendment affords protection against State interference with the equality of opportunity to vote in any election. The Fifteenth Amendment prohibits any action by the United States or a State, in any election, which interferes with the right to vote because of race or color or previous condition of servitude. The Seventeenth Amendment provides that a person possessing State qualifications has a right to vote which is derived not merely from the constitution or the laws of the State from which the Senator is chosen, but has its foundation in the Constitution of the United States. The Nineteenth Amendment supports action in any election against State interference with the right to vote because of sex.

On many occasions our Nation has found it necessary to review the state of the civil rights of its people. During the period 1776 through 1791 civil rights were of prime concern in the drafting of the Declaration of Independence, the writing of the Constitution and the Bill of Rights. A new concept of liberty emerged. It was almost immediately challenged by the Alien and Sedition Acts of 1798. Then, prior to, during, and after the War Between the States an appraisal of civil rights culminated in the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments. The most recent review prior to 1957 was initiated by Executive Order 9808 promulgated by President Harry S. Truman on December 5, 1946, establishing the President's Committee on Civil Rights. This culminated in the 1947 report of the Committee entitled "To Secure These Rights." Many recommendations were made in the voting field. Twelve years have passed since that report was issued. Without attempting to evaluate specific changes other than those reflected in the body of our report on voting, it has become apparent that legislation presently on the books is inadequate to assure that all our qualified citizens shall enjoy the right to vote. There exists here a striking gap between our principles and our everyday practices. This is a moral gap. It spills over into and vitiates other areas of our society. It runs counter to our traditional concepts of fair play. It is a partial repudiation of our faith in the democratic system. It undermines the moral suasion of our national stand in international affairs. It reduces the productivity of our Nation. In the belief that new legislation is needed, we submit for consideration of the President and the Con-

gress the following recommendations which we believe will help Americans to make good our declarations of national purpose.

REGISTRATION AND VOTING STATISTICS

Background

The Commission study of voting revealed that information on voting turnout in the United States is incomplete. Data on voting turnout among specific racial groups, particularly on a comparative basis for States or sections, was impossible to obtain except for fragmentary material provided by the Survey Research Center of the University of Michigan, Elmo Roper & Associates, and the Gallup Organization. Official State sources are of only limited help. Some States report total registration figures, in some cases broken down by counties. Other States do not report such figures. To know the extent of nonvoting requires a standard, and the one usually adopted is the potential vote; that is, the total number of citizens of voting age. This is an inexact standard because, in any year, millions of citizens are ineligible to vote because of State residence and other requirements. If it were possible to have reliable registration figures, State by State and county by county, the computation of voting turnout among those qualified to vote would be simple. Millions of citizens are eligible to register but neglect to do so and their number can be more accurately estimated if reliable registration figures are available.

Findings

The Commission finds that there is a general deficiency of information pertinent to the phenomenon of nonvoting. There is a general lack of reliable information on voting according to race, color, or national origin, and there is no single repository of the fragmentary information available. The lack of this kind of information presents real difficulties in any undertaking such as this Commission's.

Recommendation No. 1

Therefore, the Commission recommends that the Bureau of the Census be authorized and directed to undertake, in connection with the census of 1960 or at the earliest possible time thereafter,[1] a nationwide and territorial compilation of registration and voting statistics

[1] The Commission has been informed that the 1960 decennial census forms were "frozen" in December 1958. This means that the content of the 1960 census cannot now be changed through addition of new material. In fact, the forms to be used in taking the census are in the process of being printed. The Commission feels that there is such a compelling need to collect these statistics that Congress should determine the feasibility of having a supplementary census.

which shall include a count of individuals by race, color, and national origin who are registered, and a determination of the extent to which such individuals have voted since the prior decennial census.

AVAILABILITY OF VOTING RECORDS

Background

In its effort to discharge its duty to "investigate" formal complaints of denial of the right to vote by reason of race and color, the Commission found it necessary to examine the registration and voting records kept by local officials pursuant to provisions of State law. In both Alabama and Louisiana, the two States which led in the number of voting complaints received by the Commission, the Commission and its staff encountered obstacles in its effort to examine records. These obstacles were erected upon existing State laws, or interpretations thereof, by State officials; they were at least partially effective as a deterrent to the Commission's discharge of its duty.

Specifically, officials of the State of Alabama interpreted constitutional provisions vesting adjudicatory powers in Boards of Registrars to pass upon applications as precluding examination thereof by a nonjudical body of the Federal Government. This interpretation was held to be without merit by the Federal courts. Alabama officials further interpreted custodial and repository provisions of State law as precluding production of the records at the Commission's hearing. By compromise agreement, some of the records were examined by the Commission staff after the hearing.

Officials of the State of Louisiana interpreted provisions for examination of the State registration and voting records as prohibiting such examination by the Commission staff. This interpretation, similar to the Alabama refusal, necessitated exercise of the Commission's subpena power, and unnecessarily delayed the Commission's efforts to evaluate the merits of the complaints in both States.

Furthermore, after records in only one-half of the counties being investigated in Alabama had been examined, the State legislature passed a bill which permits the destruction of application forms of persons denied registration. Such forms are essential to any investigation of denials of the right to vote.

Findings

The Commission finds that lack of uniform provision for the preservation and public inspection of all records pertaining to registration and voting hampers and impedes investigation of alleged denials of the right to vote by reason of race, color, religion, or national origin.

Recommendation No. 2

Therefore, the Commission recommends that the Congress require that all State registration and voting records shall be public records and must be preserved for a period of 5 years, during which time they shall be subject to public inspection, providing only that all care be taken to preserve the secrecy of the ballot.

NON-FUNCTIONING OF REGISTRARS

Background

Complaints were frequently made that State officials charged with responsibility to register qualified persons as electors evaded this responsibility, in the case of persons of a particular race or color, by inaction. Such practices are beyond the effective reach of the present remedial provisions of the Civil Rights Act of 1957.

Specifically, the Commission found that boards of registrars in both Bullock and Macon Counties in Alabama frequently did not function as boards to register Negro applicants on scheduled dates for registration. Furthermore, in these same two counties, on several different occasions, one or more members of such boards—always in sufficient numbers to preclude the existence of the "majority" required for approval of registration—resigned their posts. And, further, State officials responsible for appointing members of boards of registrars repeatedly have delayed such appointments when boards became inoperative through resignation.

Findings

The Commission finds that the lack of an affirmative duty to constitute boards of registrars, or failure to discharge or enforce such duty under State law, and the failure of such boards to function on particular occasion or for long periods of time, or to restrict periods of function to such limited periods of time as to make it impossible for most citizens to register, are devices by which the right to vote is denied to citizens of the United States by reason of their race or color. It further finds that such failure to act is arbitrary, capricious, and without legal cause or justification.

Recommendation No. 3

Therefore, the Commission recommends that part IV of the Civil Rights Act of 1957 (42 U.S.C. 1971) shall be amended by insertion of the following paragraph after the first paragraph in section 1971(b):

Nor shall any person or group of persons, under color of State law, arbitrarily and without legal justification or cause, act, or being under duty to act, fail to act, in such manner as to deprive or threaten to deprive any individual or group of

individuals of the opportunity to register, vote and have that vote counted for any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegate or Commissioner for the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

REFUSAL OF WITNESSES TO TESTIFY

Background

In the course of conducting voting hearings in Montgomery, Ala., in December 1958, the Commission was impressed with the fact that its purposes were not fully realized because of the divided authority for compelling the production of registration records. The Commission can subpena such records but the initiative rests with the Attorney General to petition the court to order a contumacious witness to comply with a Commission subpena. Such divided responsibility is unusual. These situations require rapid, coordinated action and communication. Both are difficult to achieve when there is dual responsibility and operation.

Findings

The Commission finds that the necessity for securing the aid and cooperation of a separate agency of the Federal Government in order to discharge the Commission's responsibilities under law is a needlessly cumbersome procedure. It is not a sound system of administration. Full and effective implementation of Commission policy in the discharge of Commission responsibilities under law requires full and exclusive control of any necessary resort to the courts by the Commission itself.

Recommendation No. 4

Therefore, the Commission recommends that in cases of contumacy or refusal to obey a subpena issued by the Commission on Civil Rights (under sec. 105(f) of the Civil Rights Act of 1957) for the attendance and testimony of witnesses or the production of written or other matter, the Commission should be empowered to apply directly to the appropriate United States district court for an order enforcing such subpena.

APPOINTMENT OF TEMPORARY FEDERAL REGISTRARS

Background

The Commission has investigated sworn complaints of denials of the right to vote by reason of color or race in eight States. In two States where it determined to hold formal hearings, Alabama and

Louisiana, its efforts to secure all relevant facts were met with open resistance by State officials. Nevertheless, on the basis of the testimony of witnesses and the examination of the registration records that were made available in Alabama, and through field investigation in other States, the Commission found that a substantial number of Negroes are being denied their right to vote. The infringement of this right is usually accomplished through discriminatory application and administration of State registration laws.

But discriminatory registration is not the only problem. The Commission also found instances in which there was no registration board in existence, or none capable of functioning lawfully. In all such cases, the majority of the electorate already registered were white persons.

For one example, the members of the Macon County (Ala.) Board of Registrars resigned after this Commission's Alabama hearing. At the hearing, 25 Macon County Negroes had testified that the board had unlawfully refused to register them. Invited to answer these charges, the Macon County registrars had refused to testify. But an injunction suit against the board to compel registration of 17 of the hearing witnesses and other apparently qualified Negroes, brought by the U.S. Attorney General under the new provisions of the Civil Rights Act of 1957, was dismissed for lack of anyone to sue. Subsequently, new appointees to the Macon County board were named in July 1959. They refused to serve. Their reason, according to a United Press International report, was "the pressure for Negro registration" and "fear of being 'hounded' by the U.S. Civil Rights Commission."

The two other suits brought by the Attorney General under the same act had not at this writing resulted in a single registration. The suit in Georgia had been dismissed and was on appeal; the one in Louisiana was pending.

In short, no one had yet been registered through the civil remedies of the 1957 act.

Class suits on behalf of a number of Negroes to obtain registration have rarely been successful. The courts have inclined to the view that these suits are of an individual nature, with the result that a vast number of suits may be necessary.

The delays inherent in litigation, and the real possibility that in the end litigation will prove fruitless because the registrars have resigned, make necessary further remedial action by Congress if many qualified citizens are not to be denied their constitutional right to vote in the 1960 elections.

Findings

The Commission finds that substantial numbers of citizens qualified to vote under State registration and election laws are being denied the right to register, and thus the right to vote, by reason of their race or color. It finds that the existing remedies under the Civil Rights Act of 1957 are insufficient to secure and protect the right to vote of such citizens. It further finds that some direct procedure for temporary Federal registration for Federal elections is required if these citizens are not to be denied their right to register and vote in forthcoming national elections. Some method must be found by which a Federal officer is empowered to register voters for Federal elections who are qualified under State registration laws but are unable to register.

Such a temporary Federal registrar should serve only until local officials are prepared to register voters without discrimination. The temporary Federal registrar should be an individual located in the area involved, such as the Postmaster, U.S. Attorney, or Clerk of the Federal District Court. The fact-finding responsibilities to determine whether reasonable grounds exist to believe that the right to vote is being denied could be discharged by the Commission on Civil Rights, if extended. Because of the importance of the matter, such a temporary Federal registrar should be appointed directly by the President of the United States.

Recommendation No. 5

Therefore, the Commission recommends that, upon receipt by the President of the United States of sworn affidavits by nine or more individuals from any district, county, parish, or other political subdivision of a State, alleging that the affiants have unsuccessfully attempted to register with the duly constituted State registration office, and that the affiants believe themselves qualified under State law to be electors, but have been denied the right to register because of race, color, religion, or national origin, the President shall refer such affidavits to the Commission on Civil Rights, if extended.

A. The Commission shall—

1. Investigate the validity of the allegations.
2. Dismiss such affidavits as prove, on investigation, to be unfounded.
3. Certify any and all well-founded affidavits to the President and to such temporary registrar as he may designate.

B. The President upon such certification shall designate an existing Federal officer or employee in the area from which complaints are received, to act as a temporary registrar.

C. Such registrar-designate shall administer the State qualification laws and issue to all individuals found qualified registration certifi-

cates which shall entitle them to vote for any candidate for the Federal offices of President, Vice President, presidential elector, Members of the Senate or Members of the House of Representatives, Delegates or Commissioners for the Territories or possessions, in any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

D. The registrar-designate shall certify to the responsible State registration officials the names and fact of registration of all persons registered by him. Such certification shall permit all such registrants to participate in Federal elections previously enumerated.

E. Jurisdiction shall be retained until such time as the President determines that the presence of the appointed registrar is no longer necessary.

DISSENT BY COMMISSIONER BATTLE

I concur in the proposition that all properly qualified American citizens should have the right to vote but I believe the present laws are sufficient to protect that right and I disagree with the proposal for the appointment of a Federal Registrar which would place in the hands of the Federal Government a vital part of the election process so jealously guarded and carefully reserved to the States by the Founding Fathers.

PROPOSAL FOR A CONSTITUTIONAL AMENDMENT TO ESTABLISH UNIVERSAL SUFFRAGE

By Chairman Hannah and Commissioners Hesburgh and Johnson

The Commission's recommendation for temporary Federal registration should, if enacted by Congress, secure the right to vote in the forthcoming national elections for many qualified citizens who would otherwise, because of their race or color, be denied this most fundamental of American civil rights. But the proposed measure is clearly a stopgap.

In its investigations, hearings, and studies the Commission has seen that complex voter-qualification laws, including tests of literacy, education, and "interpretation," have been used and may readily be used arbitrarily to deny the right to vote to citizens of the United States.

Most denials of the right to vote are in fact accomplished through the discriminatory application and administration of such State laws. The difficulty of proving discrimination in any particular case is considerable. It appears to be impossible to enforce an impartial administration of the literacy tests now in force in some States, for, when there is a will to discriminate, these tests provide the way.

Therefore, as the best ultimate solution of the problem of securing and protecting the right to vote, we propose a constitutional amendment to establish a free and universal franchise throughout the United States.

An important aim of this amendment would be to remove the occasion for further direct Federal intervention in the States' administration and conduct of elections, by prohibiting complex voting requirements and providing clear, simple, and easily enforceable standards.

The proposed constitutional amendment would give the right to vote to every citizen who meets his State's age and residence requirement, and who is not legally confined at the time of registration or election.

Age and residence are objective and simple standards. With only such readily ascertainable standards to be met, the present civil remedies of the Civil Rights Act should prove more effective in any future cases of discriminatory application. A court injunction could require the immediate registration of any person who meets these clear-cut State qualifications.

The proposed amendment is in harmony with the American tradition and with the trend in the whole democratic world. As noted in the

beginning of this section of the Commission's report, the growth of American democracy has been marked by a steady expansion of the franchise; first, by the abandonment of property qualifications, and then by conferral of suffrage upon the two great disfranchised groups, Negroes and women. Only 19 States now require that voters demonstrate their literacy. Michigan, New Hampshire, Pennsylvania, Tennessee, and Vermont have suffered no apparent harm from absence of the common provisions disqualifying mental incompetents. With minor exceptions, mostly involving election offenses, Colorado, Maine, Massachusetts, Michigan, Pennsylvania, Utah, Vermont, and West Virginia have no provisions barring certain ex-convicts from the vote, and of the States which do have such provisions, all but eight also provide for restoration of the former felon's civil rights. In only five States is the payment of a poll tax still a condition upon the suffrage.

The number of Americans disqualified under each of these categories is very small compared with the approximately 90 million now normally qualified to vote. It is also small in relation to the numbers of qualified nonwhite citizens presently being disfranchised by the discriminatory application of these complex laws. The march of education has almost eliminated illiteracy. In a nation dedicated to the full development of every citizen's human potential, there is no excuse for whatever illiteracy that may remain. Ratification of the proposed amendment would, we believe, provide an additional incentive for its total elimination. Meanwhile, abundant information about political candidates and issues is available to all by way of television and radio.

We believe that the time has come for the United States to take the last of its many steps toward free and universal suffrage. The ratification of this amendment would be a reaffirmation of our faith in the principles upon which this Nation was founded. It would reassure lovers of freedom throughout a world in which hundreds of millions of people, most of them colored, are becoming free and are hesitating between alternative paths of national development.

For all these reasons we propose the following Twenty-third Amendment to the Constitution of the United States.

ARTICLE XXIII

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State or by any person for any cause except inability to meet State age or length-of-residence requirements uniformly applied to all persons within the State, or legal confinement at the time of registration or election. This right to vote shall include the right to register or otherwise qualify to vote, and to have one's vote counted.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

SEPARATE STATEMENT REGARDING PROPOSED TWENTY-THIRD AMENDMENT

By Vice Chairman Storey and Commissioner Carlton

We strongly believe in the right of every qualified citizen of the United States, irrespective of his color, race, religion, or national origin, to register, vote, and have his vote counted. We regard full protection of these rights of suffrage by both State and Federal Governments necessary and proper. Therefore, we have supported and voted for all recommendations of the Commission (except the proposed Twenty-third Amendment) to strengthen the laws and improve the administration of registration and voting procedures. However, we cannot join our distinguished colleagues in the recommendation of the proposed constitutional amendment. These are our several reasons:

1. We believe that our Commission recommendations, if enacted into law and properly enforced, will eliminate most, if not all, of the restrictions on registration and voting by reason of race, color, religion, or national origin.

A recommendation proposing a constitutional amendment granting additional power to the Federal Government would be in order only if we had found a lack of power under existing constitutional provisions. Such is not the case.

2. On principle, proposals for constitutional amendments which would alter longstanding Federal-State relationships, such as the constitutional provision that matters pertaining to the qualifications of electors shall be left to the several States, should not be proposed in the absence of clear proof that no other action will correct an existing evil. No such proof is apparent.

3. The Constitution of the United States of America presently includes sufficient authority to the Federal Government to enable it effectively to deal with denials of the right to vote by reason of race, color, religion, and national origin.

4. The information and findings cited in support of the proposed Twenty-third Amendment disclose that some illiteracy still exists, that authoritative State statistics and studies are wholly lacking to support such an important proposal, and that our staff has not had the opportunity to make a thorough study of such a far-reaching proposal.

COMMISSIONER BATTLE:

I heartily agree with the objections of Commissioners Storey and Carlton to the proposed Constitutional Amendment.

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PART THREE. PUBLIC EDUCATION

CHAPTER I. THE PROBLEM IN HISTORICAL PERSPECTIVE

One duty of the Commission is to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution."[1] The problem of school desegregation is undoubtedly the most controversial and most complex question falling within this phase of the Commission's work.

THE STATEMENT OF THE PROBLEM

Rarely has an important public issue been so clouded and confused by emotion and the expression of biased judgment as has that of discrimination in public education since the decision of the Supreme Court in the *School Segregation Cases* of May 17, 1954. The problem brought into focus by these decisions is the dual one of preserving unimpaired our system of public education, generally considered an essential bulwark of our democratic system of government, and of safeguarding the fundamental right to equal protection of the laws in the enjoyment of the opportunities of public education.

The Commission's undertaking with respect to education, therefore, is based upon two important premises: (1) that the American system of public education should be preserved, without impairment, and (2) that the recently recognized constitutional right to be free from racial discrimination in public education is to be realized.

This introductory chapter will undertake (1) to summarize the evolution of segregation in public education in the United States, and (2) to set forth the historical development in court decisions of the constitutional issue culminating in the *School Segregation Cases.*

SEGREGATION IN PUBLIC EDUCATION

Segregation by race in free public schools is known to have existed first in the non-slave States of the North.[2] In 1868, when the Fourteenth Amendment was adopted, eight States that had not belonged to the Confederacy had laws providing for separate schools for colored

[1] 42 U.S.C. 1975c(a)(2).

[2] See Roberts v. City of Boston, 59 Mass. 198–200 (1849). The Massachusetts court points out: "For half a century, separate schools have been kept in Boston for colored children, ... Schools for colored children were originally established at the request of colored citizens, whose children could not attend the public schools on acount of the prejudice then existing against them."

children.[3] The laws of five other non-Confederate States either directly or by implication excluded colored children entirely from public schools.[4] The thirteen remaining northern States either had no segregation laws or expressly prohibited segregation.[5]

In the South, with its agrarian-plantation economy and widely scattered population, the problem of school segregation did not arise before the Civil War. There were few public schools and few free Negroes residing in the slave States. Slaves, of course, were ineligible for free public education—and in most States the law forbade them to be educated at all.[6] The children of the well-to-do were taught either by private tutors or in private academies. Despite the prodding of such leaders as Thomas Jefferson,[7] the ante-bellum South had shown little interest in free public education. As late as 1866, there was no effective statewide system of public education anywhere in the South, and only a few of the larger cities maintained free schools.[8]

Although segregation by law experienced modest beginnings in the South during the period of Presidential Reconstruction (1865–67) through the enactment of the "Black Codes," educational segregation was still of minor significance,[9] since there were virtually no free schools in the South.

The subsequent establishment of schools for Negroes by the Freedmen's Bureau under an Act of Congress passed in 1865 seems to have had an important bearing on the establishment of separate schools for whites and Negroes. Since the Bureau was concerned solely with helping Negroes, the 4,000 elementary schools it set up were necessarily segregated. They served approximately a quarter of a million pupils.[10]

The triumph of the Radical Republicans in Congress led, in 1867, to Congressional Reconstruction, resulting in the overthrow of existing State governments in the South and the establishment of carpetbag regimes backed by Federal troops.

When the Fourteenth Amendment was ratified in 1868, Arkansas was the only Southern State that provided by statute for a segregated

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[3] California, Kansas, Missouri, Nevada, New York, Ohio, Pennsylvania, and West Virginia. (Supplemental Brief for the U.S. on Reargument as *Amicus Curiae*, p. 90 n. 93, Brown v. Board of Education of Topeka, Kansas, 349 U.S. 294 (1955).)

[4] Indiana, Illinois, Kentucky, Maryland, and Delaware. (*Id.* at 90.) Ohio by law excluded Negroes and mulattoes from the schools from 1829 to 1848. (Ohio Laws 1828–29, p. 72; Ohio Laws 1847–48, p. 81.)

[5] See note 3 *supra, ibid.*

[6] See note 3 *supra*, at 96.

[7] *Notes on Virginia*, Query 14.

[8] Harry S. Ashmore, *The Negro and the Schools*, p. 6 (2nd ed. 1954).

[9] Robert J. Harris, "The Constitution, Education and Segregation," 29 *Temp. L.Q.* 409 (Summer, 1956). See also Supplemental Brief, note 3 *supra*, at 15, 20.

[10] Ashmore, *op. cit. supra*, note 7, at 9.

public school system.[11] Within a year after ratification of the Amendment, the Arkansas legislature reaffirmed the principle, and Alabama, Georgia, North Carolina, and Virginia passed compulsory school segregation laws.[12]

In most of the State constitutional conventions held in the South during Reconstruction, the issue of segregation in public schools was hotly debated. Proposals were made to require or to prohibit separate schools.[13] Among the segregationists was a Northern Negro representative to the North Carolina Constitutional Convention of 1868 who argued for separate schools. He voiced the observation that the colored people of the State generally preferred colored teachers and expressed the belief that the only way they could hope to have them was to have separate schools.[14]

Of the constitutions adopted during this period, seven contained no specific provision concerning segregated schools.[15] The constitutions of Louisiana[16] and South Carolina[17] required integrated schools, and in Florida the requirement was implied.[18] A Mississippi statute made their establishment optional.[19]

Mixed schools were actually tried in only a few places, in three States. Mississippi had a few of them for a brief period; then they withered away. Integrated schools were set up in Columbia and Charleston, South Carolina, but they survived only a short time and amounted to no more than white and Negro children attending separate classes in the same school building. The records reveal only one instance in Louisiana in which Negroes sought admittance to a white school; the incident was quickly ended when the Negro children were driven from the school by white pupils.[20]

The withdrawal of Federal troops from the South in 1877, which ended Reconstruction, was followed by the restoration of the old Southern white leaders to influence and power. Harry S. Ashmore

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[11] Ark. Laws 1866–67, No. 35, sec. 5, p. 100.

[12] Ark. Laws 1868, No. 52, sec. 107, p. 163; Ala. Laws 1868, p. 148 (Act of Board of Education); Ga. Laws 1870, No. 53, sec. 32; N.C. Laws 1868–69, ch. 184, sec. 50, p. 471; Va. Laws 1869–70, ch. 259, sec. 47.

[13] See note 3 *supra*, at 98.

[14] Albert Coates, "The Background of the Decision," pp. 11–12, in *The School Segregation Decision* (by James C. N. Paul), Institute of Government, University of North Carolina, 1954.

[15] See note 3 *supra*, at 98.

[16] La. Const. arts. 135, 136 (1868).

[17] S.C. Const. art. X, sec. 10 (1868).

[18] Though Fla. Laws 1865, No. 12, ch. 1475 established separate schools for Negroes, the new State constitution, adopted in 1868, provided for "the education of all the children residing within its borders, without distinction or preference." Fla. Const. art IX, sec. 1 (1868).

[19] Appendix to Supplemental Brief for the U.S. on Reargument as *Amicus Curiae*, p. 280, Brown v. the Board of Education of Topeka, Kansas, 349 U.S. 294 (1955).

[20] Pierce, Kincheloe, Moore, Drewry & Carmichael, *White and Negro Schools in the South*, Prentice-Hall, Inc., 1955, p. 42.

sums up the ensuing era with regard to public schools in the following passage:

> Out of that unsettled era emerged the rudiments of the public education system which still serves the South. . . . The principle of universal education written into the Reconstruction Constitutions survived when the Southern white returned to power, but everywhere the laws were changed to provide that the two races were to be educated separately.[21]

Thus those of the Reconstruction constitutions that either provided for school integration or omitted mention of the subject were drastically modified in the following year. Either under new constitutional provisions or by legislative enactments or both, compulsory segregation became entrenched in the South.[22]

In the case of *Plessy v. Ferguson*, which came before the Supreme Court in 1896,[23] a Louisiana statute providing separate but equal accommodations for white and colored persons on railroads in the State was sustained as a reasonable exercise of the police power. Although this was a transportation case, Justice Henry B. Brown, in support of the Court's position, pointed out that laws separating white and colored children in public schools in many States had been generally, if not universally, sustained by the courts. He placed special emphasis upon the earliest of these cases, *Roberts v. City of Boston*,[24] which sustained the separation of children by race in the schools of Boston as meeting the requirements of the Massachusetts constitution.

The dictum of the *Plessy* case was taken as Federal approval of the separate but equal doctrine as applied to public schools.[25] The sanction it gave was to prevail for the next 58 years, and the attending pattern of race relations still continues.

In the other direction, thirteen Northern and Western States had by 1896 already either outlawed segregation in their schools or repealed laws requiring it.[26] In the next 53 years, four more States

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[21] Ashmore, *op. cit. supra* note 8, at 9.

[22] Ala. Const. art. XII, sec. 1 (1875); Ark. Acts 1873, No. 130, sec. 108, p. 392; Fla. Laws 1887, ch. 3692, p. 36; Fla. Const. art. XII, sec. 12, (1885); Ga. Const. art. VIII, sec. I (1877); La. Const. art. 248 (1898); Miss. Laws 1876, ch. 113, sec. 8, p. 209; Miss. Laws 1878, ch. 14, sec. 35, p. 103; N.C. Const. art. IX, sec. 2 (1875); S.C. Const. art. XI (7) (1895); Tex. Const. art. VII, sec. 7 (1876); Tex. Laws 1876, ch. XIV, sec. 313; Va. Const., sec. 140 (1902).

[23] 163 U.S. 537 (1896).

[24] See note 2 *supra*, at 198.

[25] In law, a dictum is a judicial opinion or observation on a point other than the precise issue of the case at hand. It has no binding force in law, but may have a strong persuasive effect on other judges. See Black's Law Dictionary (4th ed., 1951), p. 541.

[26] Calif. Code Ann. 1880, ch. 44, sec. 26, p. 47; Political Code 1880, sec. 26, p. 38. Statutes authorizing segregation of Indians, Chinese, Mongolians, and Japanese were repealed by Calif. Stats. 1947, ch. 737, p. 1792; Colo. Const. art. IX, sec. 8 (1876); Conn. Rev. Stat. 1888, sec. 2118; Idaho Const. art. IX, sec. 6 (1890); Ill. Rev. Stat. ch. 122, secs. 100–102 (1874); Iowa, The Dist. Township of the City of Dubuque v. The City of Dubuque, 7 Iowa 262 (1858); Clark v. The Board of Directors, 24 Iowa 266 (1868); Mass. Laws 1855, ch. 256, p. 674; Mich. Acts 1881, ch. III, sec. 18, No. 164; Minn. Laws 1873, ch. I, sec. 47; N.J. Public Law 1881, sec. 1, p. 186; Ohio Laws 1887, p. 34; Penn. Public Law 1881, No. 83; R.I. Gen. Laws 1896, ch. 65.

followed suit,[27] and in 1951 Arizona repealed its compulsory segregation law and adopted a permissive statute.[28]

Two things would seem to be clear from the preceding summary:

(1) Viewing our history as a whole, school segregation has been a national practice and not one unique to the South,[29] and

(2) In the South, separate schools were established as soon as Negroes were admitted to the public schools.[30]

APPLICATION OF THE "SEPARATE BUT EQUAL" DOCTRINE TO EDUCATION

Although the Court had begun to insist as early as 1914 that the provision of separate transportation facilities for the races must be equal, it was not until 1938, in *Missouri ex rel Gaines v. Canada* [31] that it challenged the adequacy of separate educational facilities. It will be recalled that under the *Plessy* doctrine, school segregation is valid only if the separate facilities are equal. This requirement was largely ignored in the field of education prior to 1938.[32] For four decades, the Court was able to avoid both the recognition of inequality within the pattern of segregation, and the application of equal protection to segregation, as such. This the Court could do because of the nature of the actions brought in the several cases coming before it.

In the first school case [33] decided by the Court after *Plessy*, the abandonment by the local school board of a Negro high school in a Georgia community while continuing to operate the white school was held not to be a denial of equal protection of the laws. However, the Court seemed to lay more emphasis on its conclusion that the injunction sought by Negro taxpayers against the operation of the white school was not the proper legal remedy and, if granted, would in no way help the colored children. The fact of segregation was not challenged in this case.

In 1908, the application to a private college of Kentucky's statute prohibiting the teaching of white and colored persons in the same institution amounted to no more than the withdrawal by the State of corporate privileges from one of its own corporations.[34] Again the fact of segregation was not challenged.

Tacit acceptance of segregation came in 1927 in *Gong Lum v. Rice*,[35] but still the Court did not meet the issue head-on, for here as in the

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[27] Ind. Acts 1949, ch. 186, sec. 2, p. 603; N.Y. Laws 1900, ch. 492, secs. 1–2; Wash. Laws 1909, sec. 434; Wisc. Laws 1949, ch. 433.

[28] Ariz. Rev. Stat. Ann., sec. 15–442(b)(3) (1958).

[29] 163 U.S. at 545 (1896).

[30] See Pierce, Kincheloe, Moore, Drewry and Carmichael, *op. cit. supra* note 20; Horace Mann Bond, *The Education of the Negro in American Social Order,* Prentice-Hall, 1934, p. 53.

[31] 305 U.S. 337 (1938).

[32] See generally Louis R. Harlan, *Separate and Unequal,* University of North Carolina Press, 1958.

[33] Cumming v. Richmond County Board of Education, 175 U.S. 528 (1899).

[34] Berea College v. Kentucky, 211 U.S. 45 (1908).

[35] 275 U.S. 78 (1927).

two preceding cases the fact of segregation was not challenged. In this case an American-Chinese girl, had sought to enter the white public school in her own district in preference to the Negro schools in another district. (No separate school for Mongolians existed.) The girl's counsel advanced this interesting argument: "The white race creates for itself a privilege that it denies to other races; exposes the children of other races to risks and dangers to which it would not expose its own children. This is discrimination." But the Court held that the plaintiff could be compelled, without denial of the equal protection of laws, to attend a school for colored children in a neighboring school district.

Not being confronted with the issue of "separate but equal" in the first case coming before it and having successfully avoided it in the second case, the Court now seemed to take the position that established practice had foreclosed discussion of the problem. In this connection Chief Justice Taft said: "Were this a new question, it would call for very full argument and consideration, but we think it is the same question which has been many times decided to be within the constitutional power of the State legislature to settle without intervention of the Federal courts." [36] Thus the "separate but equal" formula went unchallenged.

For the sake of accuracy it should be pointed out that the precedents cited by the Chief Justice in support of his conclusion were fifteen State and lower Federal court decisions. The Supreme Court itself had never ruled directly on the issue of segregation and equal protection in public education. Actually, there had never been "full argument and consideration" of the question by the Supreme Court. The Court merely assumed that the cases cited had been rightly decided and held that Martha Lum could be forced to attend the school provided for the colored race. Thus, through an analogy between railroads and schools, embodied in a judicial dictum based on State cases which had been decided before the adoption of the Fourteenth Amendment, compulsory school segregation achieved a constitutional foundation.

Beginning with the *Gaines* case, in 1938, the Court insisted on a more realistic test of equality in educational cases. But the change came gradually in more or less distinct steps until the *Segregation Cases* of 1954. First, there was a change of direction within the pattern of segregation by insisting on genuine, rather than fictitious, equality. In 1938, it was not enough for Missouri to provide a law school for whites and merely extend financial aid to its Negroes for legal education in neighboring, nonsegregated States.[37] Then in 1948,

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[36] *Id.* at pp. 85–86.

[37] Missouri *ex rel* Gaines v. Canada, 305 U.S. 337, 349 (1938).

it was ruled that qualified Negroes must be afforded the opportunity for equivalent legal training within the State without undue delay, or else be admitted to the white law school.[38]

In the *Gaines* case the Court held that Missouri denied equal protection of the laws to Gaines, a Negro, in refusing him admission to the University of Missouri Law School when the State had provided no substantially equal facilities for Negroes within its jurisdiction. Missouri, like other Southern and Border States, had provided for the payment of tuition fees of qualified Negro citizens of the State in the law schools of unsegregated States and insisted that by this arrangement it had met the "separate but equal" requirement.

This contention was flatly rejected by the Court. Chief Justice Hughes, speaking for the Court, asserted that equal protection requires that Missouri provide equal facilities for Negroes and whites within its own boundaries. "The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the quality of privileges which the law gives to the separated groups within the State," [39] declared the Chief Justice. The provision for the payment of tuition fees in another State does not remove the discrimination, for the "obligation of the State to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction." [40]

Nor did the State's argument that there was little demand for legal education on the part of Negroes in Missouri have any bearing on the issue. The right asserted by the petitioner, said the Court, was a personal one and could not be abridged because no other Negroes sought the same opportunity.

The big surge towards repudiation of the "separate but equal" theory came in 1950 when the Court, in two vitally significant cases, unanimously rejected racial segregation in the professional and graduate schools of State universities.

In the first of those cases, *Sweatt v. Painter* [41] the Court held that the barring of a Negro applicant from the University of Texas Law School had deprived him of the equal protection of the laws, even though Texas had, at considerable expense, provided a separate law school for Negroes within the State. In effect, the Court found that a segregated law school for Negroes could not provide them equal educational opportunities. In reaching such a conclusion, the Court relied heavily on "those qualities which are incapable of objective measurement but which make for greatness in a law school." [42]

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[38] Sipuel v. University of Oklahoma, 332 U.S. 631 (1948).
[39] See note 37 *supra*, at 349.
[40] See note 37 *supra*, at 350.
[41] 339 U.S. 629 (1950).
[42] See note 37 *supra*, at 634.

In short, legal education equal to that offered by the State to white students was not available to Negroes in a separate law school. Nevertheless, the Court explicitly refused either to affirm or to re-examine the doctrine of *Plessy v. Ferguson*, on the principle that it was not in the context of the case at issue. It simply held that the equal protection clause of the Fourteenth Amendment required Sweatt to be admitted to the University of Texas Law School, but it raised the standard of equality in higher education to such a level as to make it difficult for any segregated arrangement to meet the test of constitutionality.

The *Sweatt* ruling was reinforced in the *McLaurin* case.[43] McLaurin, a Negro graduate student in a State university in Oklahoma, had been separated from his fellow students by segregated seating arrangements in the university dining room, the library, and the classroom. This, the Supreme Court held, was a denial of equal protection, in that it handicapped him in the effective pursuit of his studies. The restrictions, said Chief Justice Vinson, "impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." [44]

Against the argument that McLaurin's fellow students might refuse to associate with him regardless of State discrimination, the Court retorted that this was irrelevant. "There is a vast difference, a Constitutional difference, between restrictions imposed by the State which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the State presents no such bar." [45]

Here the Court leaned even more heavily upon psychological and other intangible factors than in the *Sweatt* case, but it again refused to re-examine the *Plessy* case. In both cases, the Court had, in effect, rejected segregation without repudiating or overruling the "separate but equal" doctrine. It was able to do this because there was before it in these, as in earlier cases, a specific racial discrimination within the pattern of segregation. It could therefore grant relief to the Negro plaintiff without ruling on the whole problem of school segregation. Nevertheless, these two cases had the effect of divesting *Plessy v. Ferguson* of much of its constitutional substance and paved the way for the historic segregation decisions of May 17, 1954.

THE SCHOOL SEGREGATION CASES

The Supreme Court's consideration of these cases was marked by extraordinary caution and deliberation. When the Court convened in the fall of 1952, there awaited it five cases in which racial segrega-

[43] McLaurin v. Oklahoma State Regents For Higher Education, 339 U.S. 637 (1950).
[44] *Id.* at 641.
[45] *Ibid.*

tion of children in public schools was squarely challenged as unconstitutional. Four of these cases had originated, respectively, in Kansas, South Carolina, Virginia, and Delaware; the fifth was from the District of Columbia.

After hearing argument on the five cases in December 1952, the Court failed to reach a decision in the 1952 term. On June 8, 1953, it ordered the cases restored to the docket for re-argument in the 1953 term. On this occasion the Court resorted to the unusual practice of requesting counsel to provide answers, if possible, to certain important questions posed by the Court. Essentially what the Court wanted to know was whether there was historical evidence to show the intentions of those who proposed and approved the Fourteenth Amendment with respect to its effect upon racial segregation in the public schools, and, if the Court should find segregation in violation of the Fourteenth Amendment, what sort of decree should and could be issued to effect an orderly termination of segregation? On this latter point, the Court was concerned as to how, in the exercise of its equity powers, it could "permit an effective gradual adjustment from existing segregated systems to a system not based on color distinctions?"

The cases were re-argued in December 1953, with elaborate briefs on the intention of the framers and ratifiers of the Fourteenth Amendment. The court still proceeded with deliberation and did not hand down its decision until May 17, 1954.

The four cases arising from the aforementioned States were considered in a consolidated opinion under the title of *Brown v. Board of Education*,[46] the case that had come from Topeka, Kansas. On the question of the intended effect of the Fourteenth Amendment on education, the historical evidence submitted by counsel and supplemented by the Court's own investigation was considered inconclusive. But there was a definite answer on the question of whether racial segregation and equal protection under the laws were constitutionally consistent. Although findings of fact in the lower courts showed that colored and white schools had been equalized, or were being equalized insofar as *tangible* factors were concerned, the charge was made here that public segregation *per se* denied equal protection.

Chief Justice Warren, again emphasizing the intangible factors of *Sweatt* and *McLaurin*, declared for the unanimous Court that such considerations apply with added force to children in grade and high schools. To segregate children of minority groups from others of similar age and qualifications solely because of their race, he said, creates a feeling of inferiority as to their status in the community, and this sense of inferiority affects the motivation of the child to learn.

[46] 347 U.S. 483 (1954).

Hence, the Supreme Court agreed with the Kansas court that "Segregation with the sanction of law . . . has a tendency to [retard] the education and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial [ly] integrated school system." The Court, therefore, concluded that the doctrine of "separate but equal" had no place in the field of public education. The decision stated that "separate educational facilities are inherently unequal" and that the plaintiffs involved here had been "deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." [47]

In reaching this conclusion, the Court considered "Public education in the light of its full development and its present place in American life throughout the Nation." "In approaching this problem," said the Chief Justice, " . . . we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written." [48]

The Court did not at this time issue a decree putting its decision into effect. Rather, it ordered the cases restored to the docket for further argument on the nature of the decree by which its decision might be given effect.

In its implementing decision of May 31, 1955,[49] the Court pointed out that its earlier opinions "declaring the fundamental principle that racial discrimination in public education is unconstitutional are incorporated herein by reference" and declared that "all provisions of Federal, state, or local law requiring or permitting such discrimination must yield to this principle." The district courts, to which the cases were remanded, were directed to require that the school authorities "make a prompt and reasonable start towards full compliance" [50] with the Court's May 17, 1954 ruling. Once such a start has been made in good faith, the ruling stated, courts may afford additional time to carry out the ruling. In effecting a gradual transition from segregated to non-segregated schools, the district courts "may consider problems related to the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-

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[47] *Id.* at 494, 495. See also Bolling v. Sharpe, 347 U.S. 497 (1954), wherein segregation in the District of Columbia was held to violate the due process clause of the Fifth Amendment. A separate ruling was required because the equal protection clause of the Fourteenth Amendment applies only to action by a State.

[48] *Id.* at 492.

[49] Brown v. Board of Education of Topeka, Kansas, 349 U.S. 294, 298 (1955).

[50] *Id.* at 300.

racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems." [51] While it is clear from the language of the Court that all of these procedures must look towards compliance with the Court's ruling at the earliest practicable date, there is no indication that reasonable time will not be afforded for adjustment to difficult local situations. The Court's opinion recognizes diversity of local conditions, and its phrase "with all deliberate speed" does not contemplate uniform compliance as of a given date.[52] But the Court does demand a prompt and reasonable start towards good-faith compliance.

It should be noted, however, that the Supreme Court, in its so-called Little Rock decision of September 12, 1958, and in its opinion of September 29, 1958,[53] makes it unmistakably clear that no scheme of racial discrimination against Negro children in attending public schools can stand the test of the equal protection of the laws, if "there is State participation through any arrangement, management, funds or property." Furthermore, delay in carrying out the Court's desegregation ruling for the purpose of denying the constitutional rights of Negro children cannot be countenanced. Finally, it may be pointed out that in *Shuttlesworth v. Birmingham Board of Education* [54] the United States Supreme Court upheld as valid on its face the Alabama Pupil Placement Law "upon the limited grounds on which the District Court rested its decisions," namely, on the assumption that the law would be administered in a constitutional manner. Thus, the entire body of State legislation enacted for the purpose of circumventing, evading, or delaying the application of the Court's decision would seem to be doomed.

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[51] *Id.* at 300–301.

[52] Using this phrase in 1911, in the case of Virginia v. West Virginia, 222 U.S. 20 (1911), Justice Holmes attributed it to English Chancery, thus: "A question like the present should be disposed of without undue delay. But a State cannot be expected to move with the celerity of a private business man; it is enough if it proceeds, in the language of the English Chancery, with all deliberate speed." On behalf of this Commission, the Student Legal Research Group of the University of Virginia searched English Chancery cases from 1220 to 1865, case by case, and found nothing closer than "with all convenient speed" and "as soon as conveniently might be." For examples of the first phrase, see Vickers v. Scott, 40 Eng. Rep. (3 My. & K. 500) 190 (Ch. 1834); Buxton v. Buxton, 40 Eng. Rep. (1 My. & Co. 80) 307 (Ch. 1935). For examples of the second phrase, see Bullock v. Wheatley, 63 Eng. Rep. (1 Coll. 130) 352 (Ch. 1844); Belfour v. Welland, 33 Eng. Rep. (16 Ves. Jun. 151) 941 (Ch. 1809).

Another possibility: Justice Holmes may have read the key words in Francis Thompson's famous poem *The Hound of Heaven,* published in 1893: ". . . But with unhurrying chase,/ And unperturbed pace,/ Deliberate speed, majestic instancy. . . ."

[53] Cooper v. Aaron, 358 U.S. 28; 358 U.S. 1, 4–7 (1958).

[54] 358 U.S. 101 (1958).

CHAPTER II. SEGREGATION AND OPINION, MAY 1954

FOUR GROUPS OF STATES: THE LEGAL VIEW

Immediately prior to the Supreme Court decision in the *School Segregation Cases:*

I. Sixteen States were prohibiting school segregation by constitutional provision, statute, or court decision.[1]

II. Eleven States had no constitutional or statutory provision in the matter.[2]

III. Four States were permitting segregation in varying degrees or under specified conditions.[3]

IV. Seventeen States were requiring segregation by constitutional or statutory provision.[4]

In addition to the 17 States in the fourth group, the District of Columbia operated completely segregated schools in a dual system authorized by Congress. This practice was condemned on the same date as was segregation in the 17 States.

In these 17 States and the District of Columbia (for convenience these will be called the "Segregating States"), complete segregation prevailed in elementary and secondary schools—except in some communities having only a few Negro children to educate from time to time.[5]

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[1] **Colorado:** Colo. Const. art. IX, sec. 8; **Connecticut:** Conn. Gen. Stat. sec. 10–15 (Revision of 1958); **Idaho:** Idaho Const. art. IX, sec. 6; **Illinois:** Ill. Ann. Stat. ch. 122, sec. 6–37, (Smith-Hurd); **Indiana:** Ind. Ann. Stat. sec. 28–5156 (Supp.); **Iowa:** Iowa Const. art. IX, sec. 12; **Massachusetts:** Mass. Gen. Laws Ann. ch. 151C, sec. 2(a); **Michigan:** Mich. Stat. Ann. sec. 15.3355; **Minnesota:** Minn. Stat. Ann. sec. 126.08; **New Jersey:** N.J. Stat. Ann. 18:14–2; **New York:** N.Y. Educ. Laws sec. 3201; **Ohio:** Board of Education v. State, 45 Ohio St. 555 (1888); **Pennsylvania:** Purdon's Pa. Stat. Ann. t. 24, sec. 13–1310; **Rhode Island:** R.I. Gen. Laws sec. 16–38–1 (1956); **Washington:** Wash. Const. art. IX, sec. 1; **Wisconsin:** Wis. Stat. Ann., sec. 40.51.

[2] California, Maine, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Oregon, South Dakota, Utah and Vermont.

[3] **Arizona:** Ariz. Rev. Stat. Ann. sec. 15–442(b) (1956); **Kansas:** Kans. Gen. Stat. Ann. sec. 72–1724 (1940); **New Mexico:** N.M. Stat. Ann. sec. 73–13–1 (1953); **Wyoming:** Wyo. Comp. Stat. Ann. 67–624.

[4] **Alabama:** Ala. Const. art. XIV, sec. 256; **Arkansas:** Ark. Stat. Ann. sec. 80–509 (1947); **Delaware:** Del. Const. art. X, sec. 2; **Florida:** Fla. Stat. Ann. sec. 228.09; **Georgia:** Ga. Const. art. VIII, sec. 2–6401; **Kentucky:** Ky. Rev. Stat. sec. 158.020 (1953); **Louisiana:** La. Const. art. XII, sec. 1; **Maryland:** Md. Ann. Code. art. 77, secs, 130, 218; **Mississippi:** Miss. Const. art. VIII, sec. 207; **Missouri:** Mo. Const. art. IX, sec. 1(a); **North Carolina:** N.C. Const. art. IX, sec. 2; **Oklahoma:** Okla. Const. art. XIII, sec. 3; **South Carolina:** S.C. Const. art. XI, sec. 7; **Tennessee:** Tenn. Code Ann. sec. 49–1005; **Texas:** Tex. Const. art. VII, sec. 7; **Virginia:** Va. Const. sec. 140; **West Virginia:** W. Va. Const. art. XII, sec. 8.

[5] *e.g.* " . . . It is a tradition in Maryland that in the years past from time to time a half dozen or more colored children in Garrett County were simply enrolled in white schools and regarded as white. I do not know this to be a fact but it is generally accepted as being true." Report of Maryland State Superintendent of Schools to Commission, April 15, 1959, p. 5. "More than one southern school district found it necessary long ago to accept mixed attendance to some degree for the reason that there wasn't enough Negro pupils to justify separate facilities." (*The Daily Oklahoman,* Oklahoma City, Okla., June 2, 1955)

CHART VII. Status of Segregation, May 1954

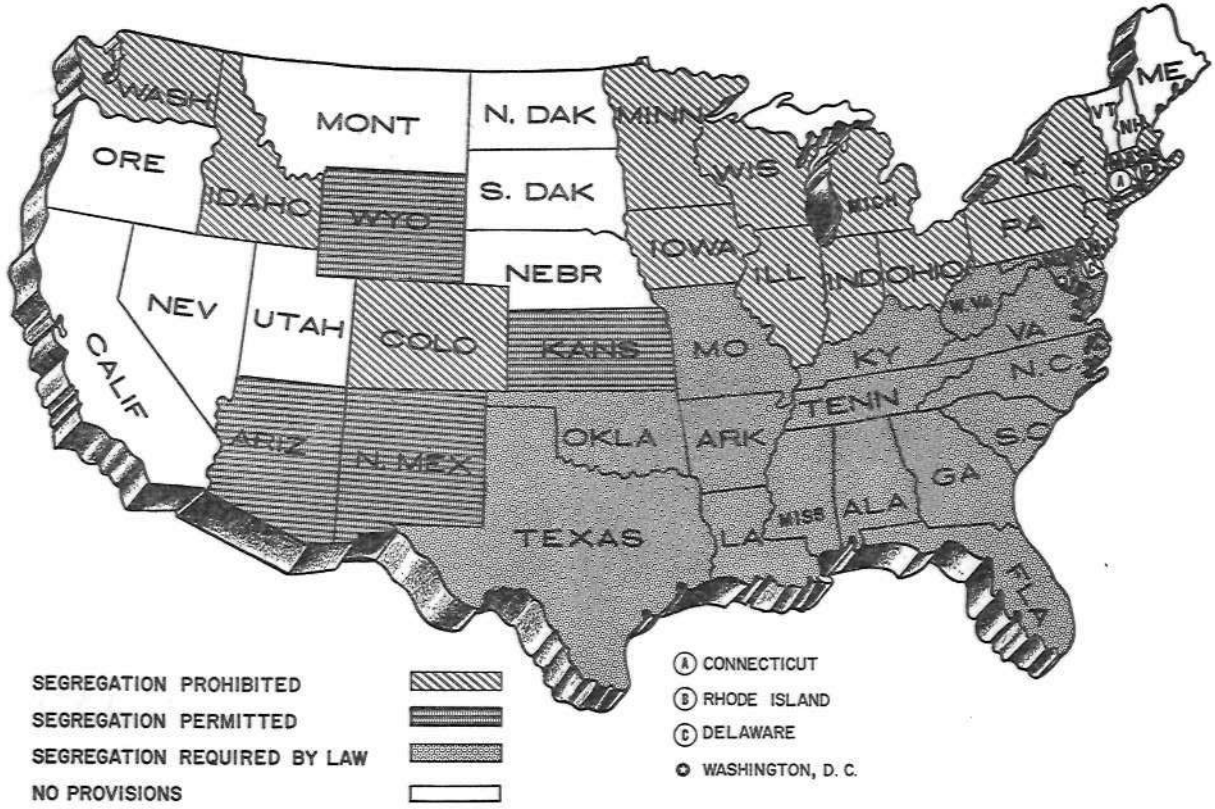


CHART VIII. Comparison of White and Nonwhite Education (*U.S. Census, 1950*)

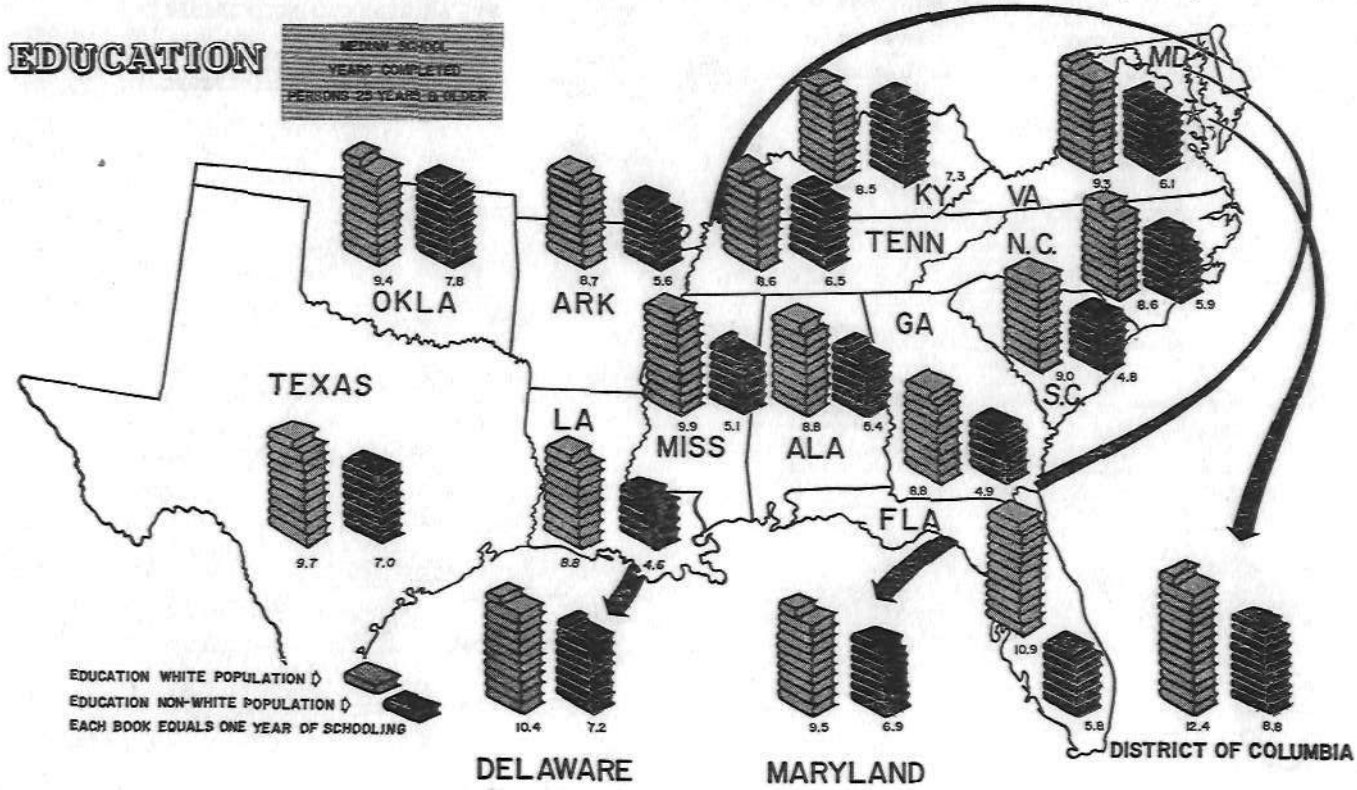
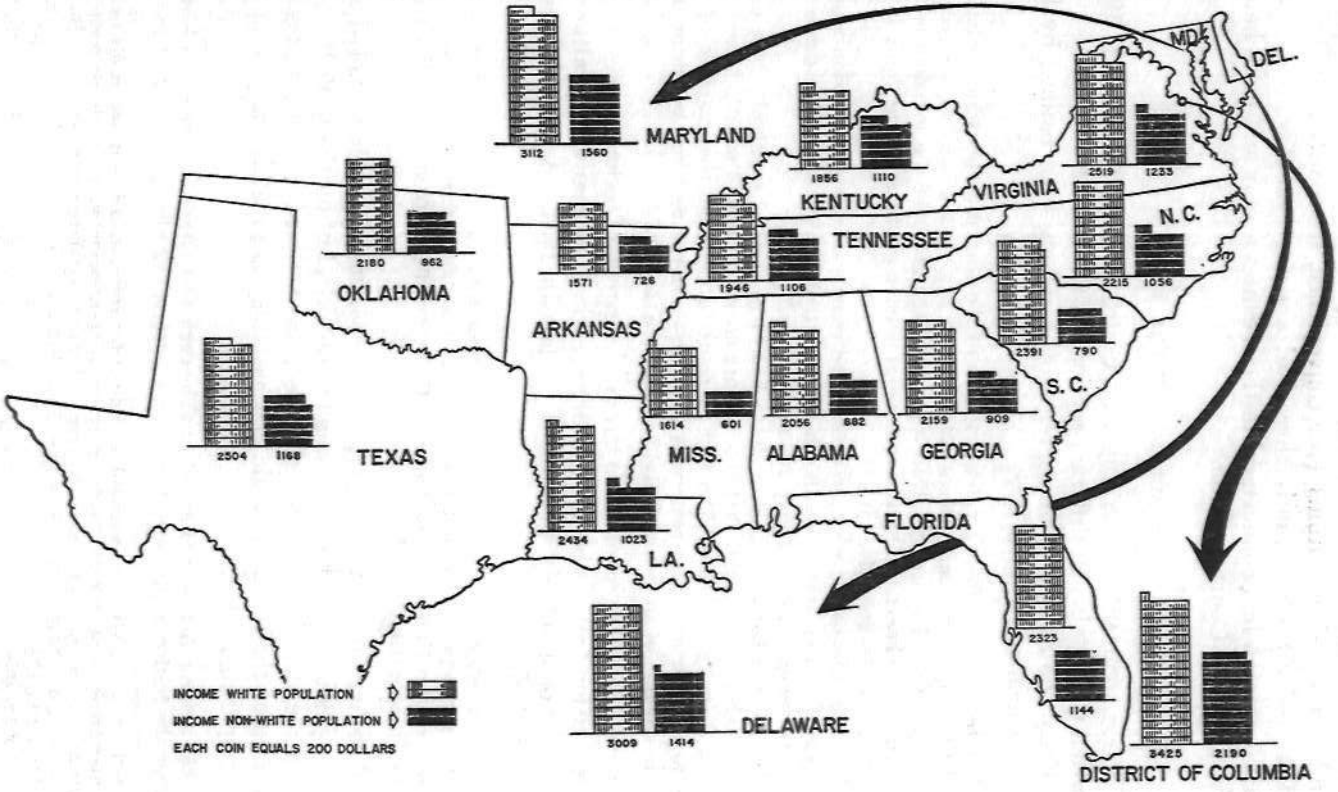


CHART IX. Comparison of White and Nonwhite Income (*U.S. Census, 1950*)



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Of the four States permitting segregation in varying degrees or under specified conditions (for convenience, these will be called the "Permissive States"), only three had any segregated schools. And desegregation had commenced in those States a year and more before the Supreme Court decision.[6]

REACTIONS OF THE PRESS

Press comment on the Supreme Court decision of May 17, 1954, varied predictably in different sections of the country.

From the States where segregation had long been banned by law came warm editorial praise.

The Detroit Free Press: "Those citizens of the United States who cherish the belief that the American concept of democracy is a vital, living, organic philosophy, slowly but inexorably advancing toward the ideals of the founders of this Union, will be heartened by the unanimous opinion of the Supreme Court in the historic school segregation case." [7]

The Minneapolis Morning Tribune: "The court's momentous decision will be welcomed and embraced by all who believe that the constitutional guarantee of equal rights means just that, and nothing less." [8]

The Denver Post: "Such an opinion had to be reached eventually in a country founded on the belief that 'all men are created free and equal'." [9]

The New York Times: "The highest court in the land, the guardian of our national conscience, has reaffirmed its faith—and the undying American faith in the equality of all men and all children before the law." [10]

Commendation came also from the press of other States where segregation had not been generally practiced for many years although it was not expressly prohibited by law in 1954. A San Francisco editor declared:

The Majesty of the democratic idea that men are created equal and are entitled to the equal protection of the laws shines through yesterday's unanimous decision of the United States Supreme Court holding segregation in the public schools unconstitutional.[11]

Another far-western paper, *The Oregonian* of Portland, noted that the injustice of segregation was nationwide, but on the wane.[12]

In the Permissive States, the press was inclined to acknowledge the justice of the decision while emphasizing its great impact upon the Segregating States.

The Arizona Republic (Phoenix): "The decision comes at a time in our history when the Nation needs to reaffirm its basic concept of liberty. . . . [But] to read

[6] The State of Wyoming provided by statute for segregation in any school district enrolling fifteen or more Negro pupils, in spite of a constitutional provision clearly forbidding segregation. So far as is known, the permission of the statute was never used. The law was repealed in 1955. (Wyo. Sess. Laws 1955 ch. 36, p. 28.)

[7] May 19, 1954.

[8] May 18, 1954.

[9] May 18, 1954.

[10] May 18, 1954.

[11] *San Francisco Chronicle,* May 18, 1954.

[12] May 19, 1954.

the Supreme Court's decision as license for undoing overnight the customs of years would be an unfortunate mistake." [13]

The Albuquerque Journal: "It is the most explosive North-South issue since the Civil War." [14]

The Topeka Daily Capital remarked that the delay in issuing the decree was in recognition of the complexity of the issue, since the decision upset the previous ruling of long standing.[15]

The *St. Louis Post-Dispatch* acclaimed the decision as "a great and just act of judicial statesmanship" [16] and the *Wilmington Journal* spoke of it as being "based on a sound American principle." [17] From Baltimore came the acknowledgment that, "segregation, however 'equal' the physical facilities, does put the brand of inferiority upon Negro pupils. . . ." [18]

Southern papers generally applauded the wisdom of the Court in postponing its decision on the "how" and "when" of desegregation.[19] Some editors urged a calm and thoughtful consideration of the complex problems raised by the decision.[20] Others recalled the efforts of the South in trying to meet the separate-but-equal standards. A Louisville paper lamented, "Now the Supreme Court says that no laying out of treasure, no burden of taxes, no reduction of white standards to try to build up the standards of the segregated Negro school, will ever suffice." [21] The same mood was voiced in Nashville,[22] while an Oklahoma editor took solace from the fact that segregated housing would minimize mixed enrollments in schools.[23] The charge was made in New Orleans that the decision did no service either to education or racial accommodation.[24] Other editors noted the public disappointment, dismay, fear, anger, or resentment the decision had evoked.[25] But Southern editors did not generally attack the decision until later. Only one reference to the issue of States rights was noted.[26]

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[13] May 18, 1954.
[14] May 18, 1954.
[15] May 18, 1954.
[16] May 18, 1954.
[17] May 18, 1954.
[18] *Baltimore Morning Sun,* May 18, 1954.
[19] *Atlanta Journal,* May 18, 1954; *Daily Oklahoman* (Oklahoma City) May 19, 1954; *Courier-Journal* (Louisville, Ky.), May 18, 1954; *Charleston Gazette* (W. Va.), May 18, 1954.
[20] *Atlanta Journal* and *Charleston Gazette* (W.Va.), May 18, 1954.
[21] *Courier-Journal* (Louisville, Ky.), May 18, 1954.
[22] *Nashville Banner,* May 18, 1954.
[23] *Daily Oklahoman* (Oklahoma City), May 19, 1954.
[24] *Times-Picayune* (New Orleans, La.), May 18, 1954.
[25] *Birmingham News* (Ala.), May 18, 1954; *News and Observer* (Raleigh, N.C.), May 18, 1954; *Clarion-Ledger* (Jackson, Miss.), May 18, 1954; *The State* (Columbia, S.C.), May 18, 1954.
[26] *Birmingham News,* May 18, 1954.

Outside the South, a favorite topic was the beneficial effect of the decision on world opinion, particularly among the nonwhite peoples:

From Minneapolis, Minn.:

"Moreover, the words of Chief Justice Warren will echo far beyond our borders and will favorably influence our relations with dark-skinned peoples the world over.[27]

From St. Louis, Mo.:

"Had the decision gone the other way, the loss to the free world in its struggle against Communist encroachment would have been incalculable. Nine men in Washington have given us a victory that no number of divisions, arms, and bombs could ever have won." [28]

From New York, N.Y.:

"When some hostile propagandist rises in Moscow or Peking to accuse us of being a class society, we can . . . recite the courageous words of yesterday's opinion." [29]

Only Radio Moscow was silent.[30]

In the wake of the decision there were calm appreciation, thoughtful concern, apprehension and resentment, but no sign of rebellion.

The States and school districts that began moving toward school desegregation after the Court issued its implementing decree on May 31, 1955, did so amid editorial opinions not markedly different. Newspapers in all parts of the Nation, including the Deep South, remarked on the Supreme Court's wisdom in adopting a moderate course.[31] Although praise was general, some feared that the "mild" decree might lull segregationists into a false security.[32] Others rebuked the Court for going beyond a declaration of principles into the field of lawmaking.[33] It was pointed out that integration was not demanded, only "racial nondiscrimination." Attention was called to the great difference between compulsory integration and racial nondiscrimination.[34]

From a border State came the warning that not all of the problems ahead were emotional or philosophical. The administrative problem of integrating teachers, and the academic problem of bringing together into the same classroom children with unequal educational backgrounds were mentioned.[35] Concern was expressed in West Virginia that the

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[27] *Minneapolis Morning Tribune,* May 18, 1954.

[28] *St. Louis Post-Dispatch,* May 18, 1954.

[29] *New York Times,* May 18, 1954.

[30] Herbert Hill and Jack Greenberg, *Citizen's Guide to Desegregation,* (Beacon, 1957).

[31] *Richmond Times-Dispatch,* June 1, 1955; *News and Observer* (Raleigh, N.C.), June 1, 1955; *Miami Herald,* June 2, 1955; *Nashville Banner,* June 1, 1955; *Arkansas Gazette,* June 11, 1955; *Atlanta Journal,* June 1, 1955; *Birmingham News,* June 1, 1955; *Los Angeles Times,* June 1, 1955; *Chicago Daily News,* June 2, 1955; *Pittsburgh Press,* June 4, 1955.

[32] *Clarion-Ledger* (Jackson, Miss.), June 3, 1955.

[33] *The State* (Columbia, S.C.), June 2, 1955.

[34] *Times-Picayune* (New Orleans, La.), June 1, 1955.

[35] *Courier-Journal* (Louisville, Ky.), June 1, 1955.

Court's cautious decree might "allow some States to get away with segregation for untold years." [36] It was predicted that the phrase "with all deliberate speed" would cause "uncertainty and turmoil for a long time." [37] A Western paper observed that "complete racial integration may yet be many court cases away." [38] "Perhaps the best way to appraise the new decision," stated the *St. Louis Post-Dispatch*, "is to say that it is good as far as it goes, but that for many citizens it does not go far enough in view of the epochal character of the 1954 decision." [39]

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[36] *Charleston Gazette* (W. Va.), June 2, 1955.
[37] *Albuquerque Journal*, June 1, 1955.
[38] *The Oregonian* (Portland), June 1, 1955.
[39] June 1, 1955.

CHAPTER III. A MEASURE OF THE TASK

The new principle announced by the Supreme Court on May 17, 1954, naturally had its greatest impact upon the areas that had organized and operated all of their school systems upon a basis of racial separation—the 17 Segregating States and the District of Columbia. These areas are all in the southeastern and south-central section of the country and extend from Delaware in the east to Texas in the west. They include all the States south of the Ohio River, plus Missouri, Arkansas, Oklahoma, and Texas. The magnitude of the adjustment required by the individual States and the communities within them varied because of wide differences in the percentage of Negroes and whites in the population.

Under the Supreme Court decision, the factors determining the time schedule of desegregation must be tangible ones that directly affect the operation of the schools. In the second *Brown* decision, the Supreme Court said that "the vitality of these constitutional principles [of nondiscrimination in public education] cannot be allowed to yield simply because of disagreement with them." [1] In *Cooper v. Aaron* [2] the Court expressly stated that hostility to racial desegregation is not one of the relevant factors to be considered in determining what is or is not "a prompt and reasonable start" and "all deliberate speed." [3] Therefore, traditional attitudes toward the Negro and the difficulties inherent in changing such attitudes have been excluded here in measuring the task in the various States.

The Commission has expressed the conviction that the transition from racially discriminatory to non-discriminatory school systems should, in the public interest, be accomplished without impairment, not to mention destruction, of the free system of public education as it exists throughout the nation. This has been mentioned in Chapter I in this report. The difficulties of such a transition and the methods and procedures appropriate are directly affected by the proportionate number of pupils segregated. Other factors, such as the extent to which one of the segregated groups may have suffered an educational disadvantage under the dual system and the urban and rural characteristics of the community, are also of importance and will be discussed in subsequent chapters.[4]

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[1] 349 U.S. 294 (1955).
[2] 358 U.S. 1 (1958).
[3] *Id.* at 7.
[4] See also *Hearings on Pending Civil Rights Bills Before a Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary,* 86th Cong., 1st Sess., 1433 (testimony of the Hon. Arthur S. Flemming, Secretary of Health, Education, and Welfare, points 2 and 4).

THE RACIAL COMPOSITION OF THE SEGREGATING STATES

In the year 1953–54, there were 28,836,052 children enrolled in the public schools of the continental United States.[5] Of this number, 10,982,935, or 38.1 percent, were in the schools of the 17 States referred to above and the District of Columbia. The percentage of Negroes in the public schools of those areas ranged from 5.7 percent to 55.0 percent, the average being 23.5 percent.[6]

The total enrollment in the public schools of the rest of the nation was 17,853,117. No racial breakdown of this figure is available, but if the ratio of Negro school children to the total Negro population is assumed to be the same as in the other States, 1,108,867 of these children, or 6.2 percent, would be Negro. Thus, it appears that in the 17 completely segregated States and the District of Columbia taken as a unit, there were more than twice as many Negro public school children as in all the remaining 31 States.

An understanding of the potential effect of the decision on each of the Segregating States and the magnitude of the adjustment called for requires a consideration of population percentage. Table 17 shows the salient 1950 census figures.

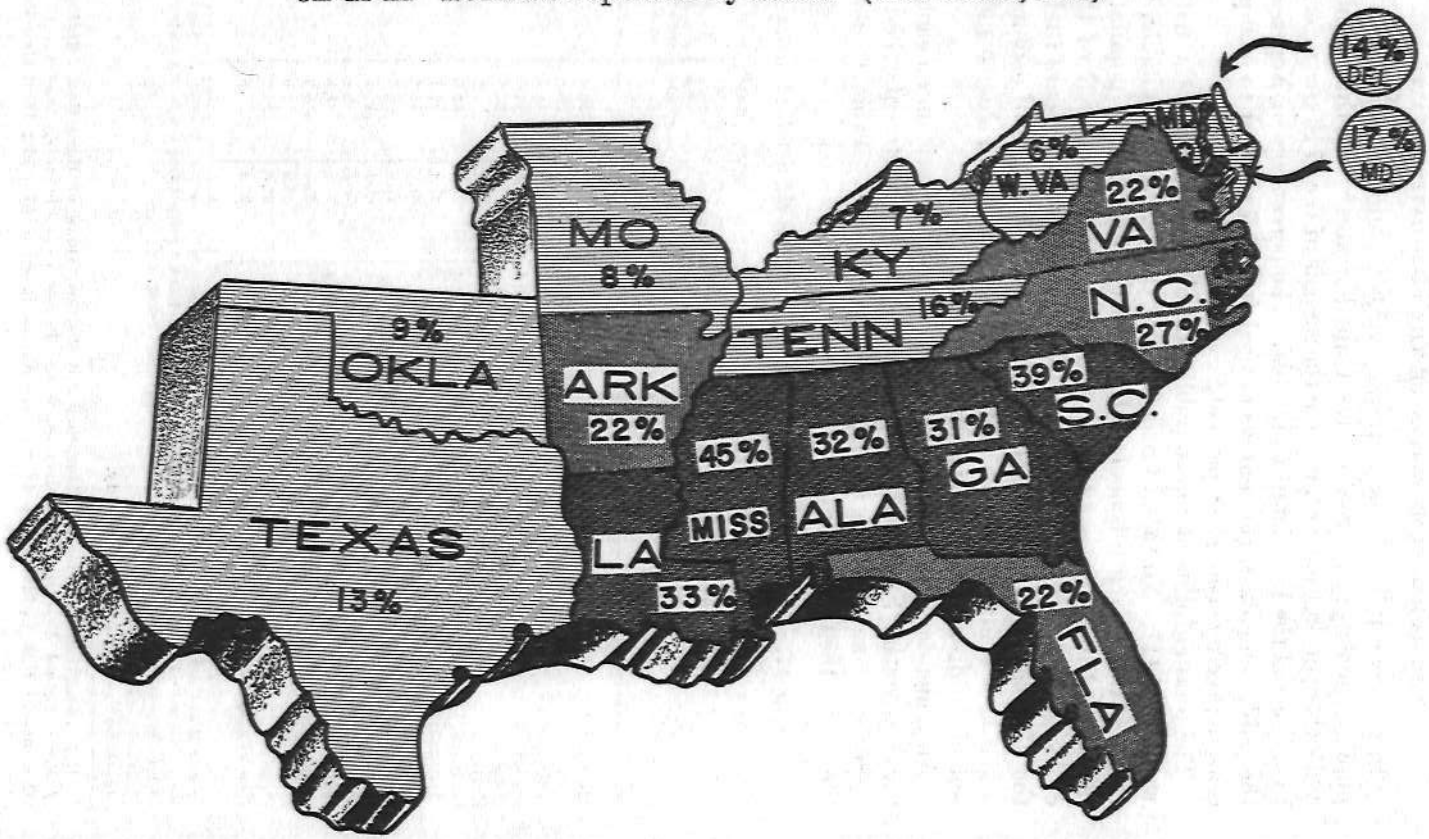
TABLE 17.—*Distribution of nonwhite [1] population in the Southern States (1950 census)*

	Number of counties	Percent range of nonwhites in population by counties		Median percent of nonwhites by counties[2]	Average percent of nonwhites in States
		Low	High		
Alabama	67	0.6	84.4	29.4	32.1
Arkansas	75	0	66.8	9.6	22.4
Delaware	3	11.8	18.6	18.3	13.9
Florida	67	4.4	62.5	24.9	21.8
Georgia	159	0	72.8	33.6	30.9
Kentucky	120	0	23.4	3.4	6.9
Louisiana	64	9.3	71.2	33.9	33.0
Maryland	[3] 24	0	42.4	19.1	16.6
Mississippi	82	5.2	81.8	43.6	45.4
Missouri	114	0	21.8	0.6	7.6
North Carolina	100	0.3	66.4	26.15	26.6
Oklahoma	77	0	29.3	6.5	9.0
South Carolina	46	11.2	72.3	47.35	38.9
Tennessee	95	0	70.6	5.2	16.1
Texas	254	0	56.9	4.05	12.8
Virginia	[4] 100	0	81.0	24.05	22.2
West Virginia	55	0	24.4	1.8	5.7

[1] Except in the State of Oklahoma, the U.S. Census classification of "nonwhite" is for all practical purposes "Negro." In Oklahoma the 1950 nonwhite population was 9.0 percent and the Negro 6.5 percent.
[2] Middle point, with equal number of counties above and below.
[3] Includes Baltimore City.
[4] Includes two cities not part of a county.

[5] U.S. Department of Health, Education and Welfare, Office of Education. *Statistics of State School Systems: Organization, Staff, Pupils and Finances, 1953–54*, p. 56. (Continental U.S. includes only 48 States. Alaska listed p. 57 under "Outlying Parts of the U.S.")
[6] *Id.* at 112.

CHART X. Nonwhite Population by States. (*U.S. Census, 1950*)



In regard to the percentage of nonwhites in the population, the States we are considering fall into three groups: (1) those in which the 1950 nonwhite population was less than 20 percent (Delaware, Kentucky, Maryland, Missouri, Oklahoma, Tennessee, Texas, and West Virginia); (2) those in which the nonwhite population was between 20 and 30 percent (Arkansas, Florida, North Carolina, and Virginia); and (3) those in which the nonwhite population exceeded 30 percent (Alabama, Georgia, Louisiana, Mississippi, and South Carolina). In terms of the proportionate number of segregated pupils to be provided for on a nondiscriminatory basis, the States in Group 1 have the easiest task, those in Group 2 a more difficult one, and those in Group 3 the most difficult.

Table 17 shows that States differ considerably in the distribution of their nonwhite population. Column 4 shows the median percentage of nonwhites by counties. In any State, half of the counties contain more and half less than this median percentage of Negro population. Comparing this figure with the average for the State and with the range between the State's high and low counties, certain characteristics of the population pattern can be deduced.

Thus (A) where the average and the median are close together, there is apt to be a fairly even distribution of Negro population throughout the State within the range of percentages shown for the high and low counties. (B) When the median is substantially below the average for the State, there are more counties with a lower-than-average percentage of Negroes. Conversely, there is a higher concentration of Negroes in relatively limited areas where the over-all density of population is greater, as in urban areas. (C) A median substantially higher than the State average shows that there are more counties with a higher-than-average percentage of Negroes than with a lower. This generally means that the Negroes are distributed over a wider geographical area and that they are relatively numerous in the characteristically thinly settled rural counties of the State.

Applying these general rules, the three groups of States can be analyzed as follows:

Group 1 (Negro population less than 20 percent): In six of the eight States of this group, the median percentage is substantially lower than the State average: Kentucky, 3.4 percent; Missouri, 0.6 percent; Oklahoma, 6.5 percent; Tennessee, 5.2 percent; Texas, 4.1 percent; West Virginia, 1.8 percent. This means that on a basis of population percentages, the problem of adjustment should not be great in most of the counties of these States. In fact, only in the few counties that have the highest percentages are extensive adjustments in the school system indicated. A measure of the maximum

difficulty is seen in the percentages of Negroes in the counties of highest concentration: Kentucky, 23.4 percent; Missouri, 21.8 percent; Oklahoma, 29.3 percent; Tennessee, 70.6 percent; Texas, 56.9 percent; and West Virginia, 24.4 percent.

In two States (Delaware and Maryland) the median is higher than the State average and approaches the 20-percent maximum average for the States in the first group. Delaware has only three counties and can therefore be analyzed more simply. Two of the counties average 18.5 percent nonwhites. The third county has only 11.8 percent. The two with a substantial Negro population embrace a relatively large area and face much greater problems of adjustment than in other States in this group. The same may be said of Maryland with a median of 19.1 percent. In half of the counties of Maryland, Negroes constitute from 19.1 to 42.4 percent of the population.

Group 2 (Negro population 20–30 percent): Four States fall into this group (Arkansas, Florida, North Carolina, and Virginia). Of these, only Arkansas has so low a median that relatively slight adjustment is entailed in a large number of counties. In North Carolina, the median is slightly lower than the State average, but a range of from 0.3 to 26.2 percent in half of the counties indicates that there is only a small portion of the State in which the adjustment would be slight. In the other half of the counties, the percentage of Negroes ranges up to 66.4 percent. In Florida and Virginia the median is a few points higher than the average and essentially the same as North Carolina's median, so that a somewhat similar situation exists in all three States. In half of the counties of Florida, Negroes constitute 24.9 to 62.5 percent of the population, and in Virginia 24.1 to 81.0 percent.

Of the four States in this group, only Arkansas shows more than a small area in which the number of Negroes alone would not pose a real problem in the adjustment of the school system to a racially nondiscriminatory basis.

Group 3 (Negro population more than 30 percent): The remaining five of the 17 Segregating States (Alabama, Georgia, Louisiana, Mississippi, and South Carolina) have the most difficult problems of adjustment resulting from high percentages of Negroes. In Alabama, half of the counties have more than 29.4 percent Negroes, and the median figure is even higher in the other four (Georgia 33.6 percent, Louisiana 33.9 percent, Mississippi 43.6 percent, and South Carolina 47.4 percent). Alabama and Georgia have a few counties with a very few Negroes—as low as 0.6 percent in Alabama and less than 0.1 percent in Georgia. But in Mississippi, the county with the fewest Negroes (5.2 percent) has approximately the same proportion as the average for the whole of West Virginia (5.7 percent). The

county with the fewest Negroes in Louisiana and South Carolina (9.3 and 11.2 percent respectively) exceeds the State average for Kentucky, Missouri, and Oklahoma, as well as West Virginia. In South Carolina, half of the counties have more than 47.4 percent Negroes. These counties are predominantly rural in character, with less than average population density. The average for the whole State is 8.5 percent lower (38.9 percent). The problems of adjustment in the States of this group, based on the percentages of people discriminated against, would be very great.

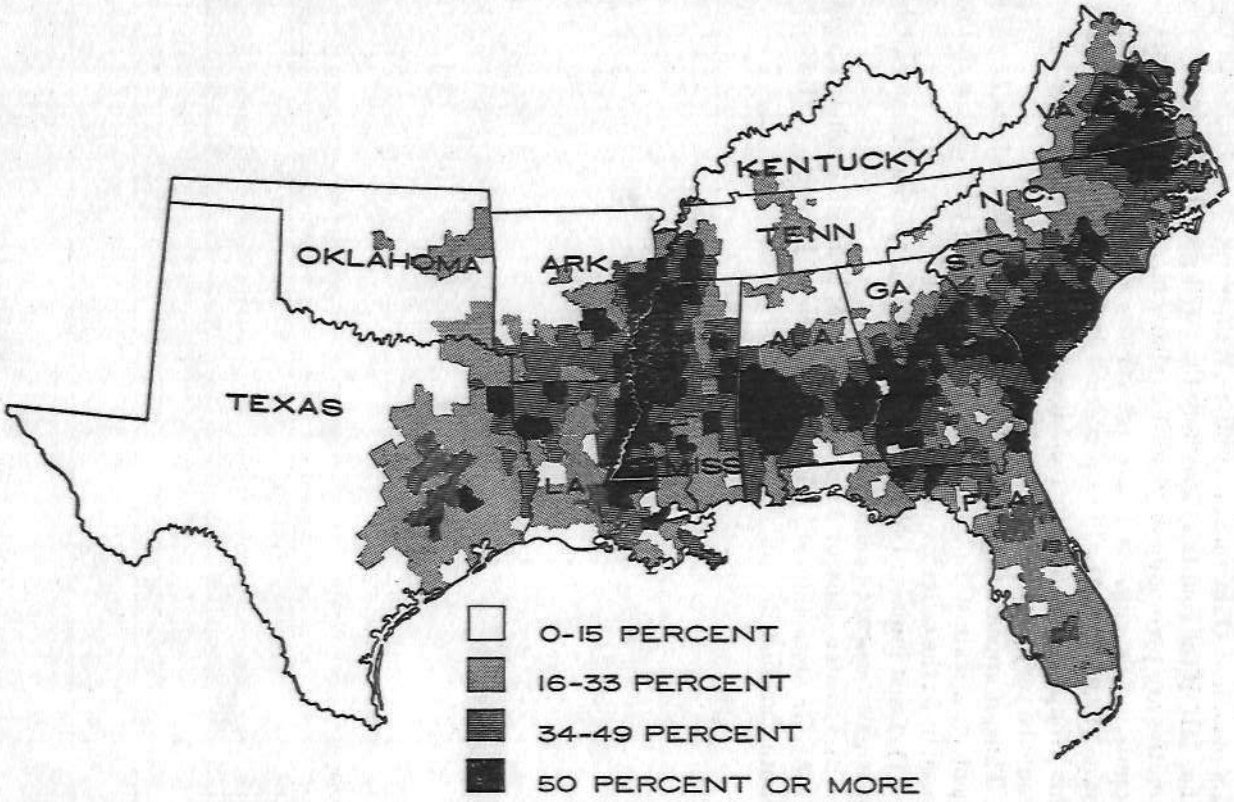
Thus, it appears that in severity of impact and problems of adjustment on a state-wide basis, the states might be classified as follows, based upon the criteria considered:

(1) Least impact: Delaware, Kentucky, Maryland, Missouri, Oklahoma, Tennessee, Texas, West Virginia.

(2) Greater impact: Arkansas, Florida, North Carolina, Virginia.

(3) Greatest impact: Alabama, Georgia, Louisiana, Mississippi, South Carolina.

CHART XI. Nonwhite Population by Counties. (*U.S. Census, 1950*)



CHAPTER IV. FIVE YEARS OF PROGRESS—1954-59

In response to the decision of the U.S. Supreme Court outlawing racial discrimination in the public schools, communities in the 17 States that had been requiring segregation fell into three broad groups:

(1) Without waiting for the Court's implementing decree which was to come a year later, one group of five large cities and many smaller localities moved swiftly toward desegregation.

(2) The second group, generally by direction of State authority, took no action until after the implementing decree of May 31, 1955. These "wait and see" communities, like those in the first group, were located chiefly in States bordering the South.

(3) The third group, located generally in the Deep South, took no action, and in most instances were bound by a rapidly developing State policy of resistance and legal challenge.

This chapter first considers the five large cities that took immediate steps to implement a desegregation program. In the remainder of the chapter significant developments in the transition to a non-racial school system are treated on a State by State basis, beginning with the States in which desegregation first occurred.

THE LARGE CITY SYSTEMS

The five cities that acted swiftly were Washington, Baltimore, Wilmington, St. Louis, and Kansas City (Mo.). All had high percentages of Negro population. Chief among the factors that influenced the action they took were their geographical location, the official attitude expressed by their State and local leadership, the readiness of police, churches, and school administrators to cooperate, and the changed or changing status of segregation in other phases of their community life. Two basically different methods of approach, however, were evident among the five; Washington and Baltimore represented the total, all-at-once method, while Wilmington, St. Louis, and Kansas City formulated gradual plans. Differences within each of the two methods also appeared.

A climate of readiness and acceptance

In all five cities there had been, over a period of years, a breakdown or softening of segregation in areas of community life other than the public schools. In some, the public schools were almost the only area in which the pattern of segregation remained substantially intact in the spring of 1954. To these communities, school desegregation was just one more step, albeit a big one. Testimony on this point was

given when, at the invitation of the Commission on Civil Rights, school officials from 13 States and the District of Columbia met to report their desegregation experiences at a National Conference of Public School Officials at Nashville, Tenn., on March 5 and 6, 1959.

Dr. Carl F. Hansen, Superintendent of Schools in Washington, D.C., stated that in his rapidly desegregating city, "the school system, in effect, was reacting to changes within the community rather than leading those changes." [1] Dr. John H. Fischer, Baltimore Superintendent of Schools, believed that what happened in his city was in harmony with its history: "This was the biggest single step our community had ever taken toward desegregation, but it was in no sense a change of course. We simply kept moving in the same direction in which we had been moving for many years." [2]

In other communities, the transition involved a more difficult adjustment. Speaking of Wilmington, Superintendent Ward I. Miller reported that some steps had been taken by the city at large, such as the opening of motion picture theaters to both races, but that ". . . the schools led the way towards desegregation and integration." [3]

Municipal facilities in the five cities had generally been desegregated. These included transportation facilities, parks, auditoriums, libraries, and civil service employment. Many professional organizations had dropped racial bars. Sporting events had become desegregated. Either voluntarily or under State law, Negroes had been enjoying widening job opportunities. None of the cities was completely free from segregation practices in public accommodation. The most complete segregation pattern was maintained in regard to restaurants, motels, and hotels; but there were significant exceptions in all of the cities. Private recreational facilities, such as motion picture houses, had seen considerable desegregation since World War II. The Catholic parochial schools, not without some initial opposition from patrons, had abolished segregation in St. Louis in 1947 and in Washington in 1948. Perhaps the greatest state of readiness could be found within several of the school systems themselves.

WASHINGTON

In 1947 the Washington School Superintendent established a committee on intercultural education; and a handbook on intergroup education was prepared. School leaders unofficially accepted speaking engagements at human relations seminars and workshops. In 1952 the Board of Education invited suggestions from the community on

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[1] Commission on Civil Rights, *Conference before the United States Commission on Civil Rights,* U.S. Government Printing Office, 1959, p. 54. (Hereafter this publication will be referred to as "Nashville Conference.")

[2] Nashville Conference, p. 139.

[3] *Id.* at 72.

how desegregation should be effected if and when the Supreme Court found segregation unconstitutional. In 1953 the School Superintendent established a program in intergroup education for the school administration and staff.[4] At this time, the issue of school segregation was before the U.S. Supreme Court, and Washington was directly affected by this litigation.[5]

With the President of the United States and the Commissioners of the District of Columbia clearly on record as favoring desegregation at the earliest possible moment, there was no foundation for further delay after the Supreme Court rendered its decision. President Eisenhower in his 1953 State of the Union message to Congress had asserted, "I propose to use whatever authority exists in the Office of the President to end segregation in the District of Columbia . . ." [6]

In the school year 1953–1954, Negroes constituted 56.8 percent of the total public school population of Washington, including the teachers' colleges and kindergartens.[7] On May 25, 1954, the Board of Education announced that the District of Columbia would be desegregated, and the plan of procedure was presented.

From that time to the actual opening of the schools in September, little more was done to prepare the community and the school system. The foundation had been laid; the community had been kept informed and allowed to express its varying opinions on the subject of how the transition could best be accomplished. But no doubt had been left that desegregation was coming, and soon.

The Washington plan began with a redistricting of all schools into neighborhood zones without regard to race. These zones were mandatory for all children new to the system, at all grade levels. Children already in the system who found themselves in a new school zone had the option of continuing in the school previously attended or entering the school in their new zone. There was no choice for pupils advancing from elementary schools to junior high schools or from junior to senior high schools. The white and Negro teachers' colleges received applications without regard to race. The separate administrative units were unified. Examinations for teachers were put on an integrated basis, and teacher elegibility lists for all grade levels were merged.[8]

Washington had been operating virtually two separate school systems, in which administration was dual at all levels until merged in the office of the Superintendent. "One of the great values . . . of

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[4] *Id.* at 54.

[5] Bolling v. Sharpe, 347 U.S. 497 (1954).

[6] 99 Cong. Rec. 752 (1953).

[7] D.C. Public Schools, Office of the Statistician, Department of General Research, Budget and Legislation, 15 Year Enrollment by Race—Oct., Nov. 10, 1958.

[8] Letter from Superintendent of Schools to the Board of Education of the District of Columbia, dated June 23, 1954.

desegregation in Washington is what I would call a unification of the school system," said Superintendent Hansen at the Nashville Conference. The unification enabled "the Board of Education, school officials, teachers, pupils, parents, citizens, and civic organizations . . . to meet together and work together and exchange views without fear or self-consciousness or the defensiveness which the old system fostered." [9]

"The second value in unification," continued Dr. Hansen, "is that the total system could now work as one for the improvement of the school system. . . . Under the dual system, for example, the simple claim for better equalization of space, teachers, and resources led to intra-family squabbling that prevented progress and improvement. Child was set against child, group against group. This was the pattern of social and civic disunity that was shaped by the matrix of the dual system. It is hard to imagine that opponents of desegregation would want really to return to the clumsy, provocative, and inefficient system of education which had been tolerated so long in the Nation's capital." [10]

Superintendent Hansen emphasized the rapidity of the change that took place in the District of Columbia in these words:

"The scope of the unification that occurred from May 25, to September 1954, perhaps has not been duplicated in the history of school administration anywhere in the country. When the District of Columbia schools closed in June of 1954 there was no racial intermixing at all. When they opened in September of 1954, 116 (or 73 percent) of the schools included Negro and white pupils together, and white and Negro teachers were working side by side in 37 (or 23 percent) of the schools in the fall. This transition had been accomplished over a period of about two months' time." [11]

Statistical reports dated November 1954, show that of the District's total of 163 schools, 14 were all-white, 29 had less than 10 percent Negro enrollment, 27 were all-Negro, and 52 were more than 90 percent Negro. In sum, 122 of the 163 schools had an enrollment of less than 10 percent or more than 90 percent Negro.[12]

No violence or other serious incidents accompanied desegregation in the Washington schools. Beginning about October 4, there were student demonstrations and boycotts at three high schools and six junior high schools. Within four days, order was restored, and attendance returned to normal.[13] These demonstrations did not coin-

[9] Nashville Conference, p. 55.

[10] *Id.* at 55–56.

[11] *Id.* at 56.

[12] D.C. Public Schools, Office of the Statistician, Membership as of Nov. 4, 1954, compared with Nov. 5, 1953.

[13] *Southern School News*, Nov. 1954, pp. 4–5. (Hereafter this publication will be referred to as S.S.N.)

cide with the opening of desegregated schools but occurred after local newspapers had reported similar demonstrations in Baltimore, Md., and Milford, Del.

The beginning of the spring school term saw another step achieved in the desegregation program. Midyear junior high school graduates were required to enter high schools according to the new non-racial school zone boundaries. This involved 1,018 pupils.[14]

Little increase was noted in disciplinary problems. "Actually," said Superintendent Hansen in 1959, "in some instances the incidence of severe cases seems to be subsiding . . . The children do not so often now become involved in conflicts which have a racial characteristic or motivation." [15]

Dr. Hansen further expressed confidence in a general improvement in standards.[16] Since 1954, tests had shown a slow but steady rise in the over-all averages, while at the same time high standards of accomplishment were being set for and achieved by "gifted" children. These standards had been made possible by the so-called Four Track System, under which all students at the senior high school level had been grouped according to their scholastic performance.

BALTIMORE

In the spring of 1954, Baltimore appears to have resembled Washington very strongly in the degree of readiness for desegregation within the school system and in its community organizations and activities. It had long been standard procedure in Baltimore to conduct all Staff teachers' meetings on a biracial basis. Also, the professional teacher organizations were biracial, as was the city council of PTA groups. Many student activities and summer programs were desegregated. Glee clubs and bands were exchanged for programs within the segregated system. In 1952 a specialized technical boys' high school was desegregated upon the ground that no such facility was available to the Negro youths.[17]

The Attorney General of Maryland, shortly after the 1954 decision, advised the State Board of Education that the State's own laws prohibited desegregation until the final decree of the Supreme Court in the *Brown* case. This bound the State as a whole. However, Baltimore is an independent administrative unit within the State, and the City Solicitor ruled that the immediate effect of the 1954 decision made the segregation provisions of the Baltimore City Code "unconstitu-

[14] S.S.N., Feb. 1955, p. 4.
[15] Nashville Conference, pp. 58, 63.
[16] *Id.* at 60.
[17] *Id.* at 136–139.

tional and invalid." [18] In June of 1954, Baltimore decided to desegregate its schools the following September.

Baltimore has about a million inhabitants, and Negroes constituted 39 percent of the total enrollment when the schools opened in September, 1954.[19] The most significant fact in the desegregation of Baltimore's schools was the simplicity of the plan. Students were allowed to enroll in whatever school they chose, provided it was not already overcrowded. Baltimore had never established school attendance zones except in instances of overcrowding. Thus it was only necessary to remove the classification of schools as being for one race or the other. No special attempt was made to integrate faculties, but from 1954–55 on, race was not to be a factor in the assignment of teachers.[20]

Another noteworthy feature of Baltimore's desegregation was the absence of specific programs of orientation and preparation either for school staff members or for the community. Such programs were deemed unnecessary in view of the state of readiness and acceptance that had been achieved during preceding years.[21]

In September 1954, the Baltimore schools opened with students of both races in 49 of the city's 163 schools. These 49 schools were attended by 46,431 white and 3,973 Negro pupils, constituting 53.6% and 6.9% of the total white and the total Negro enrollment respectively.[22] Most of the Negro pupils in desegregated classes were kindergarteners and first graders whose parents registered them in schools nearest their homes. A few hundred others registered in formerly all-white junior and senior high schools, some because these schools were nearest their homes and some because of preference for a particular school.[23] In the first year, six Negro teachers were teaching white or mixed classes.[24]

The Baltimore transition was unmarred by strife or incidents of a serious or lasting nature. About one month after the schools had opened, adult picketing occurred at one elementary school where twelve Negro children had been enrolled in kindergarten. This spread to about a dozen schools, primarily in southwest Baltimore. School attendance fell off badly. But within a day or two, many community groups rallied spontaneously behind the School Board. At the opening of the new school week, the Police Commissioner announced through all communication media that the picketing was in violation of two statutes relating to disturbing a public school in session and attempting to induce a child to be illegally absent from school. He

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[18] S.S.N., Sept. 1954, p. 6.

[19] *Ibid.*

[20] Statement of Superintendent John H. Fischer submitted to the Commission on Civil Rights. Nashville Conference, pp. 147–48.

[21] *Ibid.*

[22] Information supplied to the Commission by John H. Fischer, Superintendent of Baltimore Schools.

[23] Statement, *op. cit. supra* note 20; Nashville Conference, p. 148.

[24] S.S.N., Oct. 1955, p. 2.

stated that the picketing would have to stop by the next day and that these statutes would be enforced. The picketing did stop, and shortly thereafter attendance was back to normal. There was no further difficulty during school year 1954–55.[25]

Dr. John H. Fischer, the Superintendent, reflected that, were he to face the problem again, he would not materially alter the procedure followed.[26] "We continued to operate our schools after September 1, 1954," he stated, "precisely as we had up to that point with one exception. That was that from that point forward, the race of a child would be no consideration in any decision made about that child . . . our purpose was to open the doors of all of our schools to all children without discrimination, but not to push or pull anybody through a door. We have said that we believed it wrong to manipulate people to create a segregated situation. We believe it equally wrong to manipulate people to create an integrated situation. We believe it wrong to manipulate people." [27]

Washington-Baltimore comparison

Although Washington and Baltimore both represent large city school systems with a comparable community readiness, and although both utilized basically the immediate and total method in desegregating their school systems, there were differences to be noted. The fundamental difference was the complete freedom of choice in Baltimore compared with the compulsion inherent in the school zone attendance feature of the Washington plan. This difference in approach was not so much a matter of choice in the two communities as it was a result of the difference in organizational history of the systems themselves. Baltimore never had zoned its school system, Washington had. In Washington, therefore, considerably more planning and preparation was necessary in order to merge the two separate school divisions into one zoned system.

It is noteworthy that the relatively complete freedom of choice offered by the Baltimore plan resulted in the attendance of both races in less than one-third of the city's schools, while the zoning plan utilized in Washington brought mixed enrollment to three-quarters of the schools in the first year. Other factors, such as the difference in percentage of the Negro school population and in the housing patterns of the two cities, were no doubt involved.

WILMINGTON

Delaware's only major city has more than one-fourth of the State's Negro school enrollment.

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[25] Nashville Conference, p. 141.
[26] *Id.* at 144.
[27] *Ibid.*

As early as 1952, Negroes had gained admittance to all-white schools under court order in two districts in Delaware. The State court found that equal facilities were not being provided and ordered the pupils admitted to white schools, but this left them subject to reassignment to Negro schools whenever equal facilities might be provided. The case [28] was consolidated with others to constitute the *School Segregation Cases*, and thus it reached the Supreme Court in 1954.[29] Also in the early 1950's, a three-room country school near Wilmington had admitted a few Negro pupils on its own volition.

The Attorney General of Delaware advised the State Board of Education immediately after the 1954 decision [30] that the "separate but equal" provisions of the State constitution were no longer binding on the State's school districts. Under direction of the Governor, the State Board of Education issued on June 11, 1954, a formal statement authorizing all school districts to formulate desegregation plans and on August 2 approved the Wilmington plan for immediate implementation.[31]

The Wilmington school system had already adopted a biracial policy in respect to various school functions. Teachers' organizations and adult education courses were desegregated. Teachers of both races worked together on committee assignments. Classes for handicapped pupils were biracial, and special student activities, including sports, were also unsegregated.[32]

Negroes constituted about 30 percent of the total enrollment in Wilmington in school year 1953–54.[33] It was expected that this percentage would be about the same in September, 1954. A more cautious approach to desegregation was adopted here than in Washington or Baltimore. Various desegregation plans and proposals were carefully studied by the school officials during June and July, and public hearings were held. On August 2, the School Board approved and announced the first steps in the plan.

The plan involved redistricting of elementary school attendance areas without regard to race. This was coupled with continuation of a policy permitting transfers. Upon request of parents, pupils could move to a school in another zone, as long as space was available.

At the high school level, trade or industrial courses and advanced academic courses that were taught only in certain schools were opened to all qualified students without regard to race. All evening school classes were similarly opened. The summer school program, the

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[28] Gebhart v. Belton, 91A. 2d 127 (1952).
[29] 347 U.S. 483 (1954).
[30] Nashville Conference, p. 82.
[31] S.S.N., Sept. 1954, p. 3.
[32] Nashville Conference, p. 71.
[33] S.S.N., Sept. 1954, p. 3.

course in practical nursing, and certain classes in special education were also to be integrated.[34]

The school administration conducted a program of home visitation by white and Negro principals and teachers during the summer of 1954. This was a get-acquainted and orientation program for parents, pupils, and teachers who would be affected by desegregation in the fall. Additional social workers, psychologists, and home visitors were employed to deal with problems that might arise.[35]

The National Association for the Advancement of Colored People urged that integration be direct and complete the first year. Its request was rejected, however, and desegregation was spread over a three-year period. After the first year, NAACP officers in Wilmington complimented the Board of Education for proceeding as it had.[36]

School opened in September without significant opposition. The expected rash of transfer requests did not develop.[37]

The immediate result of the Wilmington plan was desegregation of 8 of the city's 14 elementary schools. Four remained all-white and two all-Negro. Approximately 600 Negro pupils entered formerly all-white schools (most of them in three schools). About 20 white pupils entered formerly all-Negro schools. Although a number of high school courses were open to members of both races at certain white and Negro schools, no desegregation actually took place at that level. Only one high school transfer was requested, and the pupil did not qualify scholastically. Six Negro teachers taught the first year in three formerly all-white schools.[38] The final step in Wilmington's desegregation program was taken in September of 1956, with the result that only five of the city's schools remained either all-white or all-Negro.[39] These exceptions were due primarily to residential patterns, and in the school year 1958–59, although three schools remained all-white, all the Negro children were in schools attended by white children.[40]

Wilmington had earlier moved toward a Three Track System for differentiating students on a basis of ability. Though a disproportionate number of Negro children were in the lower third, Dr. Ward I. Miller, the Superintendent of Schools, reported that there were also

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[34] Nashville Conference, pp. 72–73, 83; Ward I. Miller, *Equal Educational Opportunity in Wilmington* (an article prepared by the Wilmington Superintendent for the *1958 Yearbook of the Middle States Council for the Social Studies*); S.S.N., Sept. 1954, p. 3.

[35] Nashville Conference, pp. 73, 81.

[36] *Id.* at 73.

[37] Miller, *op. cit. supra* note 34; Nashville Conference, p. 83.

[38] Special Memorandum *re* Integration, from the Office of the Superintendent to the Board of Public Education in Wilmington, dated Feb. 21, 1955; S.S.N., Oct. 1954, p. 4.

[39] Commission Questionnaires 1958–59, completed by school officials of the individual school districts. (Hereafter, this will be referred to simply as Commission Questionnaires.)

[40] Nashville Conference, p. 73; Commission Questionnaires.

a number in the honors and advanced placement classes, proving their ability to make good in competition with white students.[41]

ST. LOUIS

About half of Missouri's Negro pupils were enrolled in the public school system of St. Louis in 1954. They constituted one-third of the city's total school enrollment.[42]

The Governor of Missouri promptly announced in 1954 that the State would comply with the Supreme Court's decision. The Attorney General, in response to an inquiry by the Commissioner of Education, issued an opinion on July 1, 1954, declaring that the segregation provisions of the State Constitution and statutes were "superseded by the decision of the Supreme Court of the United States and are therefore, unenforceable . . ." [43] He further stated that school districts were free to desegregate their schools at once. Shortly thereafter, both St. Louis and Kansas City announced desegregation plans.

The St. Louis plan provided for:

1. September, 1954—Desegregation at the junior college and teacher college levels and desegregation of special city-wide schools and classes (e.g. schools for handicapped children).
2. February, 1955—Desegregation of the high schools, which in the meantime were to be redistricted. This step included desegregation of the adult education program, but not the technical high schools.
3. September, 1955—Desegregation of the technical high schools and of all the regular elementary schools.[44]

The new high school districts were to be drawn on a non-segregated basis, and the map was to be published on November 15, 1954. The new elementary school districts were to be similarly established and published by February 1, 1955. The new attendance districts were mandatory, and transfers were authorized only to relieve over-crowding. However, a student affected by the new districting could continue in his old school until graduated.[45]

This gradual plan was a product of the school administration's belief that the community needed ample notice of steps to be taken. The interval between the announcement and the implementation could be used profitably in preparing parents and pupils for the transition and in making necessary adjustments within the school system.

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[41] Nashville Conference, p. 75.

[42] St. Louis Public Schools, Instruction Department, "Desegregation of the St. Louis Public Schools," Sept. 1956, p. 4.

[43] 1 *Race Rel. L. Rep.* 277, 282 (1956).

[44] St. Louis Public Schools, *op. cit. supra* note 42, at 13–14.

[45] *Ibid.*

Individual school principals were given the direct responsibility for preparing both their school and community. In all cases the emphasis was on promoting intergroup activities and understanding, both in the student body and in neighborhood PTA units, mothers' clubs, and other organizations. Many teachers' conferences and meetings were held.

The desegregation plan included teacher integration, but here again caution was exercised to assure success. Above-average teachers were assigned to classes attended for the first time by members of both races.[46]

The initial result of the program was that in September, 1954, the formerly separate teachers' colleges were merged and completely integrated both as to students and faculty. The racial ratio in the combined student and faculty was about six whites to four Negroes.[47]

High school redistricting and desegregation at the beginning of the second term left two high schools all-Negro. But six of the seven white high schools acquired some Negro enrollment. The Negro high schools were located in totally Negro residential areas. The highest proportion of Negroes in a formerly all-white high school was 30 percent. No significant incidents disturbed St. Louis in the first year of desegregation.[48]

KANSAS CITY, MO.

The Negro school population of Kansas City in the school year 1954–55 was 10,400, or 16 percent of the total enrollment of 64,000.[49]

Kansas City's approach to desegregation was quite similar to that of St. Louis. Early in the summer of 1954 the Board of Education announced that integrated classes would be conducted in the summer sessions of two high schools and at the junior college level. On July 30, 1954, the Board announced its plan for the complete desegregation of the city's schools.[50]

The plan had two phases. The first, to be effective in September, 1954, involved integration of the two junior colleges and the two vocational high schools. In both cases, the enrollment of the Negro institutions was transferred to the white schools. The second phase included desegregation of all other public schools in September, 1955.[51]

Integration of summer school classes, it was reported, "went off perfectly." After the first two weeks of integration in the junior colleges and vocational high schools, the Superintendent of Schools

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[46] St. Louis Public Schools, *op. cit. supra* note 42, at 22–23.
[47] *Id.* at 22.
[48] S.S.N., March 1955, p. 3.
[49] S.S.N., Oct. 1954, p. 10.
[50] S.S.N., Sept. 1954, p. 9.
[51] *Ibid.*

declared: "The change was made smoothly and without incident; no evidence of friction, no significant protest by parents or students." [52] The official policy included "good, orderly planning, full information, fair and honorable approach to all decisions, with especial attention to the school aspects of the problem." [53]

In March, 1955, the Board of Education approved and released maps showing the new school district boundaries for both elementary and high schools. Here again, adequate time was allowed for public reaction, preparation, and acceptance. In certain areas of the city, pupils could choose between two or more high schools, but this was not new. Parents had long been permitted to do this and also to request transfer where space was available. According to physical capacity, schools were classified as closed, critical, or open. No transfers were allowed to those designated as "closed." Transfers to the "critical" schools were limited to persons who could show hardship or certain other reasons not connected with race or desegregation. Counsel for the Board of Education cautioned the school officials to be certain that the transfer policy was not administered in a racially discriminatory manner.

No definite plans seem to have been formulated for mixing the faculties in 1955–56, though it was assumed that race would no longer be a controlling factor in assigning teachers.[54]

Kansas City-St. Louis-Wilmington comparison

Kansas City and St. Louis moved toward desegregation similarly. Both followed a gradual method as did Wilmington. Both used redistricting; both desegregated at the college and high school levels as a first step. Neither took a major step in September, 1954. Complete desegregation was to be acheived in both by September, 1955.

The only significant difference in the two plans was that Kansas City maintained a liberal transfer policy along with its redistricting, while St. Louis made its new attendance areas mandatory. However, St. Louis eased this restriction by permitting students to continue in their old schools until graduation and allowing transfers in cases of overcrowding.

Wilmington, on the other hand, took a major step in September, 1954, and its initial impact was in the elementary schools. The elementary schools were redistricted, but as in Kansas City, a liberal transfer policy was followed. Instead of immediately announcing a timetable for desegregation, Wilmington adopted a wait-and-see attitude toward further steps.

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[52] S.S.N., Oct. 1954, p. 10.
[53] *Ibid.*
[54] S.S.N., April 1955, p. 10.

Kansas City, St. Louis, and Wilmington all felt that additional community and school preparation was necessary before implementing their plans. Wilmington school officials accomplished the major part of this program in the summer of 1954. More cautiously, St. Louis and Kansas City continued their preparation throughout the 1954–55 school year.

DELAWARE

School year 1954–55

Desegregation in Wilmington, the State's only major city, has previously been examined. At the time of the *Brown* decision, Delaware had a total of 106 school districts in its three counties. The districts ranged in size from tiny one-room school districts to city districts containing a number of schools. Some districts included both white and Negro schools, while others were either all-white or all-Negro. About two-thirds of the districts had Negro pupils within their attendance areas.[55]

Soon after the announcement of school desegregation in Wilmington, other nearby school districts in New Castle County made desegregation plans. The schools of Delaware City, Newark, and Newcastle announced programs.

The State capital, Dover, located at about the geographical center of the State in Kent County, decided to undertake a limited plan. Farther south, the town of Milford, which straddles the line between Delaware's two southern counties, Kent and Sussex, announced a plan of desegregation just prior to the opening of school.

Therefore, the school year 1954–55 opened with 13 of Delaware's 106 school districts desegregated in some degree. With the exception of Dover and Milford, all of the districts were in northern Delaware within 15 to 20 miles of Wilmington, north of the Chesapeake and Delaware Canal, the State's "Mason-Dixon line," which bisects New Castle County.[56]

Reports indicate that in the districts of northern Delaware where desegregation took place in the school year 1954–55, it was preceded by a distinct pattern of desegregation in other areas of community life. Specifically, these areas were public transportation, parks, libraries, and civil service employment.[57] These districts are all located near Wilmington and no doubt had about the same diminishing pattern of segregation in public accommodations as had been developed in that city.

Interracial activity and contact within the school system probably also followed the pattern of Wilmington. In Newark, for example, white teachers

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[55] S.S.N., Sept. 1954, p. 3.

[56] See June Shagaloff, "Desegregation of Public Schools in Delaware," 24 *J. Negro Ed.* 188 (1955); S.S.N., Sept. 1954, p. 3, Oct. 1954, p. 14.

[57] Commission Questionnaires.

had been teaching special subjects in Negro schools for years, and teachers' organizations and meetings had been integrated since 1948.[58]

Although segregation in other areas of community life is more prevalent in southern Delaware, the Dover Superintendent reported desegregation of some public facilities.[59] He credited prior interracial activity within the school system with paving the way for a limited desegregation plan.[60] The big Dover Air Force Base, with its desegregation policy and numerous rather transient personnel from other sections of the country, also influenced the situation.[61] Another factor in Delaware was the absence of State laws requiring segregation elsewhere than in public schools. Official policy favoring school desegregation at the earliest possible moment has previously been noted.[62]

The first year of desegregation in Delaware was generally characterized by a smoothness of transition, but a serious course of events in Milford captured the Nation's interest.

Milford officials had given little, if any, advance notice of desegregation plans, and there had been no preparation of the community or school personnel. After Milford's few Negro pupils had been in school for one week, public protests induced the local School Board to close the schools. Publicity attracted outside agitators, including one Bryant Bowles, founder and president of the National Association for the Advancement of White People. The situation became increasingly tense and vituperative. The Governor and the Attorney General were unable to restore order. Angry crowds demonstrated when the State Board of Education reopened the schools, and an attendance boycott ensued. The original local board having resigned, a new Bowles-supported board expelled the Negro pupils.[63] This took the dispute to court. The decision there was that the local board had lacked authority to admit the Negroes. This was because the State board had stipulated that all desegregation plans must be first submitted to it, and the local board had failed to comply with this directive, which had the force of law in the State.[64] Result: Milford's 1954 school desegregation lasted little more than a week.

While the situation was getting out of hand in Milford, disturbances a few miles north in Newark, Del., were swiftly quelled by firm official and police action.[65]

School year 1955–56

There were no new instances of actual desegregation in Delaware in this school year, although desegregation programs progressed in

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[58] Herbert Wey and John Corey, *Action Patterns in School Desegregation,* Bloomington, Ind., 1959, pp. 48, 70.
[59] Commission Questionnaires.
[60] Nashville Conference, p. 160.
[61] *Id.* at 162.
[62] *Supra,* p. 180.
[63] S.S.N., Oct. 1954, pp. 4, 16; Nov. 1954, p. 6.
[64] Steiner v. Simmons, 111, A. 2d 574 (1955).
[65] See Wey and Corey, *op. cit. supra* note 58, at 190.

districts that had undertaken them the year before. An additional eight school districts, both Negro and white, were reported to have announced a policy of desegregation but to have received no applications that would entail integration.[66]

The State Department of Public Instruction reported at the end of September that 11.7 percent of Delaware's Negro school population were attending classes "under integrated conditions." [67]

In Wilmington, where the desegregation program was extended to the junior high school level and the transfer policy liberalized at the high school level, a Negro boy was elected president of the junior class of the newly desegregated Pierre S. du Pont High School.[68] However, in southern Delaware, the resistance to school desegregation had become more recalcitrant.

The State Board of Education had, for the second time, called upon local school boards to submit tentative desegregation plans and had established guides for the districts in the development of their plans. But the State board took the position that the decision as to the type of plan to be utilized rested with the local school board. For this reason the State Board of Education, though petitioned by the NAACP, refused to order immediate integration of eight school districts, six in Sussex County, one in Kent County, and one in New Castle County.[69] The result of this refusal was a lawsuit by the NAACP against the eight school districts, the State Board of Education, and the State Department of Public Instruction.[70]

School year 1956–57

This school year found 3,248 Negro pupils, or about 28 percent of the State's Negro school enrollment, in classes with white children.[71] However, it was reported that, outside the city of Wilmington, only 304 Negro children were in integrated classes throughout the State.[72]

The Christiana School District, consisting of an eight-room country school in New Castle County, was the only district added to the list of desegregated districts. Christiana was one of eight defendant districts in the NAACP lawsuit just mentioned.[73] The School Board chose to begin desegregation rather than litigate the issue. Another district, Milton, first answered in the suit that it would also desegregate in September, but community pressure forced the School Board to reverse its position.[74]

In July, 1957, the Federal District Court ordered the State Board of Education to submit within 60 days a plan of desegregation for all the school districts of the State that had not admitted Negroes under

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[66] S.S.N., Oct. 1955, p. 10.
[67] *Ibid.*
[68] S.S.N., Nov. 1955, p. 14.
[69] S.S.N., April 1956, p. 6.
[70] Evans v. Bd. of Education, 145 F. Supp. 873 (D. Del 1956).
[71] S.S.N., April 1957, p. 2.
[72] S.S.N., Dec. 1956, p. 10.
[73] *Supra,* note 70.
[74] S.S.N., Sept. 1956, p. 9.

a plan approved by the State Board of Education.[75] The decision was appealed.

School year 1957–58

Increased activity on the part of Citizens' Councils and the Ku Klux Klan was reported in southern Delaware as a result of the Court decision noted above.[76]

Although no additional school districts began desegregation programs, the Delaware State Department of Public Instruction reported that 36 percent of the total Negro school enrollment was in desegregated classes, compared with 28 percent for the preceding year.[77]

The Federal Circuit Court of Appeals for the Third Circuit affirmed the decision of the lower Federal Court in the *Evans* case and decreed that it was the proper function of the State Board of Education to formulate desegregation plans for all segregated districts in the State. On October 12, 1958, the Supreme Court of the United States declined to review the case.[78]

School year 1958–59

Once again, the school year opened with no new instances of desegregation.

The State as a whole was carefully watching the developments in the case of *Evans v. Buchanan*, which would set the schedule of desegregation for all the remaining districts in Delaware. The answer came on April 24, 1959, when the Federal District Court approved the plan submitted by the State Board of Education, with only two exceptions. This was a twelve-year plan, to be effective for the first grades of all segregated school districts in September, 1959, with desegregation to proceed one grade each year until completion in 1970.[79] The primary objection of the court was in respect to the provision of the plan giving pupils the choice of either attending the nearest school within their district or the school they would have attended prior to desegregation. The Court felt that this provision would deprive many Negro children of the possibility of ever attending school with white children, and ordered it amended.[80]

MARYLAND

School year 1954–55

Maryland has a county-unit school system. The entire system thus consists of 24 districts (23 county districts and the independent Baltimore City district). Only Baltimore implemented a desegregation

[75] Evans v. Buchanan, 149 F. Supp. 376 (D.C. Del. 1957); 152 F. Supp. 886 (D.C. Del. 1957).

[76] S.S.N., Oct. 1957, p. 8.

[77] S.S.N., Nov. 1957, p. 12.

[78] Evans v. Buchanan, 256 F. 2d 688 (3rd Cir., 1958); *cert. denied*, 358 U.S. 841 (1958).

[79] Evans v. Buchanan, Civ. No. 1816–1822, D.C. Del., April 24, 1959; 27 U.S. L. Week 2555.

[80] S.S.N., May 1959, p. 12.

plan in the first school year. The 22 counties that had Negro school population were bound by the ruling of the State Attorney General to await the implementation decree of the United States Supreme Court.[81]

Outside of the City of Baltimore the Negro population of the State is located chiefly in the "eastern shore" and southern counties. Segregation was the general rule throughout the State in places of public accommodation and recreation at the time of the decision in the *School Segregation Cases.* However, a number of inroads had been made in the general pattern of discrimination and segregation, especially near the large urban areas of Baltimore and Washington, D.C. Within the school system itself, professional personnel of both races had become accustomed to working together in all but four counties.[82]

School year 1955–56

After the issuance of the implementation decree by the United States Supreme Court on May 31, 1955, the Maryland Attorney General immediately advised the State Superintendent of Schools that "all constitutional and legislative acts of Maryland requiring segregation in the public schools in the State of Maryland are unconstitutional and hence must be treated as nullities." [83] Immediately thereafter, the State Board of Education and the Board of Trustees of the State Teachers' Colleges of Maryland, by joint resolution, called upon local school officials to commence the transition to a racially nondiscriminatory school system at the earliest practicable date, and abolished compulsory segregation in the State Teachers' Colleges.[84]

In September, eight counties initiated some form of desegregation program, but only in seven of these were Negro pupils actually enrolled in integrated schools. In the eighth, no applications for transfer were received from Negro parents. In the seven counties, 991 Negroes, constituting 6.4 percent of the total Negro enrollment in these counties, attended formerly all-white schools. For the State as a whole 4.4 percent of the total Negro school enrollment attended school with white children.

The plans used by the counties were basically two. In five counties, Negro parents were permitted to apply for admission of their children to a white school if it was nearer to their residence than the Negro school. Three counties implemented plans which were a step toward elimination of the dual school system. In these, specified schools with established attendance areas were opened to pupils of both races. This latter plan was adopted by the counties with smallest percentages of Negro school enrollment.

All but two of the seven counties reported that the transition was smooth and free from overt opposition. In the two there was some

[81] See *supra,* p. 177.
[82] Assistant State Superintendent of Schools, Report to Commission, April 15, 1959.
[83] 40 Ops. Att'y. Gen. Md. 175–77 (1955).
[84] 89th Annual Report of the State Board of Education of Maryland 1955, pp. 32, 33.

community opposition and indications of the presence of outside agitators.[85]

School year 1956–57

Eleven additional counties adopted desegregation plans. All eleven utilized the transfer-upon-application method. In five of these no Negro children applied for admission to all-white schools.

In the counties, as distinct from the city districts, the number of Negro children involved in desegregation activity remained small. Actually, the percentage of Negro pupils attending school with white children in Maryland counties decreased. However, the sharp increase in the number of biracial schools in Baltimore enable the State as a whole to report 19 percent of its Negro school population in school with white children.

Two of the counties that adopted transfer policies were in areas of the state that are Deep South in character and tradition: one is on the Eastern Shore, the other in southern Maryland.

Disturbances involving the segregationist Maryland Petition Committee occurred in two counties, but they were minor.

School year 1957–58

Effective this school year, the last three Maryland counties with Negro school enrollment adopted desegregation plans, which again were of the transfer-on-application type. However, because of the paucity of applications in counties with this type of plan, the number of counties enrolling pupils of both races remained the same as in the preceding year, 13 out of 22. The percentage of Negro pupils attending school with white children increased slightly to 21.7 percent. Minor disturbances again occurred in two counties.

In St. Mary's, the southernmost county in Maryland, a desegregation plan had been adopted which included at the time only the elementary grades. However, two applications had been received in the summer of 1957 for admission to a high school and a junior high school, respectively. Both were rejected by the school board. The controversy as to the junior high school application became moot, but litigation followed in the case of the high school, which resulted in a decision ordering the applicant to be admitted. The court ruled that no equitable grounds had been established that could require delay in the realization of plaintiff's constitutional right.[86]

A seven-year plan received federal court approval in Harford County, but this came only after a modification was introduced, which opened the door for applications ahead of the desegregation schedule.[87]

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[85] Commission Questionnaires.

[86] Groves v. Board of Education, 164 F. Supp. 621 (D.C. Md. 1958), *aff'd*, 261 F. 2d 527 (4th Cir. 1958).

[87] Moore v. Board of Education, 152 F. Supp. 114 (D.C. Md. 1957), *aff'd sub. nom.* Slade v. Board of Education, 252 F. 2d 291 (4th Cir. 1958), *cert. denied*, 357 U.S. 906 (1958).

School year 1958–59

With the admission of the Negro children to schools in St. Mary's County, the number of Maryland counties enrolling pupils of both races in the same schools was brought to 14. In the State as a whole, 30.5 percent of the Negro school children were enrolled in schools also attended by white children. However, eight counties with an announced policy of desegregation had not, in fact, admitted a Negro pupil to a white school.[88]

WEST VIRGINIA

School year 1954–55

This State has a county-unit school system of 55 school districts which correspond geographically with the counties. At the time of the *Brown* decision in 1954, the population of the State was 5.7 percent Negro. According to the Assistant State Superintendent of Schools, the Negro population was and is concentrated in the southern and eastern counties; 11 of the State's counties have fewer than 50 Negroes and 17 have more than 2,000. None of the 11 counties operated Negro schools.[89]

Although State law did not compel segregation in West Virginia except in schools and State hospitals, it was common in hotels, restaurants, theaters, churches, and even graveyards. However, transportation was generally desegregated. Negroes voted freely, and race relations on the whole were considered good.[90] There was less racial discrimination outside of the schools in those counties that desegregated the first year than in those that did so later, according to evidence from more than half of the desegregated counties.[91]

Both the Governor and the State Superintendent of Free Schools declared in May, 1954, that the State intended to abide by the *Brown* decision. The Attorney General ruled on June 1 that the State University from then on had to admit qualified pupils regardless of race,[92] and the State School Superintendent on the same day wrote to county superintendents saying, in part, "As segregation is unconstitutional, Boards should, in my opinion, begin immediately to reorganize and readjust their schools to comply with the Supreme Court's decision." [93]

The official State position and the advantages of the large county-unit school district organization were considered major contributing factors in the number of desegregation decisions made the first year.[94]

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[88] Response to Commission Questionnaires revealed that in seven of these counties no applications for admission to white schools had been received. In the eighth one application had been received but was rejected because an all-Negro school was closer to the child's home.

[89] Nashville Conference, pp. 116, 117.

[90] Lawrence V. Jordan, "Educational Integration in West Virginia," 24 *J. Negro Ed.* 371 (1955).

[91] Commission Questionnaires.

[92] Ops. Att'y. Gen. W. Va., 100–102 (Report 1954–56).

[93] S.S.N., Sept. 1954, p. 14.

[94] Nashville Conference, pp. 117, 118.

In June of 1954, the State Board of Education announced that all of the State's nine white colleges would be open to Negro students.[95] In September, Negro pupils in 22 counties entered formerly all-white schools. Three other counties with no Negro school enrollment announced a policy of desegregation.

One-half of the West Virginia school districts that had maintained segregated schools moved toward desegregation in this school year. Nine counties with very small Negro populations reported complete integration. But in the southern and eastern counties of the State, where Negroes were most numerous, almost no desegregation occurred.[96]

Three counties suffered disturbances in 1954. Greenbrier County on the Virginia border, with a Negro population of about 5 percent, opened all schools to Negro pupils. After a quiet week, student picketing began and adult crowds gathered at two high schools. The local school board reversed its desegregation decision.[97]

In Boone County, in south-central West Virginia, the School Superintendent quelled the first disturbance by seeking and getting support from the student council of the desegregated high school. Newspapers cooperated by playing-down these incidents, and when the school officials stood firm, the disturbances ended.[98]

In Marion County, located in the northern part of the State, mothers and a few fathers picketed a desegregated school for two days. A local judge, issuing an injunction against them, declared: "If necessary, I'll fill the jail until their feet are sticking out the windows." Peace returned to Marion County.[99]

Far more impressive than these scattered incidents was the smoothness of transition achieved in many other communities.

School year 1955–56

In the fall of 1955, 11 additional West Virginia counties implemented desegregation plans.[1]

Court action or threat of action caused a number of counties to begin desegregation in this school year or to stipulate that first steps would be taken in September, 1956. Litigation involving Logan and McDowell Counties, both in the southern part of the State and having large Negro populations, were particularly significant in breaking the segregation barrier in the most resistant area.[2]

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[95] S.S.N., Sept. 1954, p. 14.
[96] S.S.N., Oct. 1954, p. 14.
[97] *Ibid.*
[98] *Ibid.*
[99] S.S.N., Nov. 1954, p. 15.
[1] Southern Education Reporting Service, *Status of School Desegregation in the Southern and Border States*, Oct. 15, 1958, p. 30.
[2] Shedd v. Bd. of Education, Civ. No. 833, S.D. W.Va., April 11, 1956; 1 *Race Rel. L. Rep.* 521 (1956). Martin v. Bd. of Education, S.S.N., June 1956, p. 11.

A protest meeting of citizens in Raleigh was successful in coercing the Board of Education to rescind its desegregation plan, which would have been effective in September, 1955.[3] In 1954, Greenbrier County had similarly rescinded its desegregation plan.[4] Subsequent court action forced the issue in both of these counties, to the effect that desegregation was adopted in both in the second semester of that school year.[5]

School year 1956–57

In this school year, five counties were added to the list of those that had implemented a desegregation program.[6] Two of them had been subject to court action.[7]

Mercer County was the scene of picketing by parents, but it ceased after ten days when it became clear that the Board of Education would not back down from its desegregation order. Minor and short-lived disturbances also occurred in Logan and McDowell counties.[8]

One of the State's leading newspapers conducted a survey indicating that desegregation had resulted in financial savings ranging from a few hundred dollars a year in Lewis County to $250,000 a year in Kanawha County.[9]

It was also reported that the number of schools operated exclusively for Negroes had been decreased from 243 in the school year 1953–54 to 109 by the end of 1956–57.[10]

School year 1957–58

Initial desegregation occurred in Berkley, Hampshire, and Jefferson counties in this school year. The significant fact was that all West Virginia counties that had operated separate schools for Negroes were either completely or partially desegregated.[11]

Several counties experienced student walk-out demonstrations by white students in the wake of the Little Rock publicity, but school activities returned to normal within a short time.[12]

School year 1958–59

The process of desegregation moved forward in an orderly manner. The transition was marred by several school fires, one bombing, and a number of bomb threats. In no instance, however, could any of these events be definitely related to desegregation activity.[13]

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[3] S.S.N., Dec. 1955, p. 7.
[4] *Supra*, p. 192.
[5] See S.S.N., Feb. 1956, p. 15; Taylor v. Bd. of Education, Civ. No. 159, S.D. W.Va., Jan. 10, 1956, 1 *Race Rel. L. Rep.* 321 (1956); Dunn v. Bd. of Education, Civ. No. 1693, S.D. W.Va., Jan. 3, 1956, 1 *Race Rel. L. Rep.* 319 (1956).
[6] Southern Education Reporting Service, *op. cit. supra* note 1.
[7] Mercer and McDowell.
[8] S.S.N., June 1957, p. 3.
[9] *Charleston* (West Virginia) *Gazette*, June 9, 1957.
[10] S.S.N., Dec. 1956, p. 12.
[11] Southern Education Reporting Service, *op. cit. supra* note 1.
[12] S.S.N., Nov. 1957, p. 8.
[13] See Nashville Conference, p. 119.

In his closing remarks to the Commission at its Nashville Conference, Dr. Rex M. Smith, the Assistant State Superintendent of Schools, made the following statement:

> I wish to conclude by saying that in the implementation of these policies of legal compliance, we will be many years in effecting integration in the true sense of the word, although desegregation may, within itself, come with comparative ease. Our problems exist in the minds of men, and we do not feel that it is the prerogative of school administration, or even the courts, to force this change. We do feel, however, obligated not to retard the orderly processes by which men examine and re-examine their attitudes and beliefs to the end that we might devise more effective patterns of human relations and more productive patterns of intergroup action. Such is the spirit of democracy.[14]

ARKANSAS

School year 1954-55

The day after the 1954 Supreme Court decision, Governor Francis Cherry of Arkansas said, "Arkansas will obey the law—It always has." Later he stated that desegregation in 1954 would be premature,[15] and the State Board of Education concurred.

The Negro population of Arkansas is concentrated in two areas. One is the eastern cotton-growing section along the Mississippi River. In these counties the population ranges from 48 to 67 percent Negro. The second area embraces the southern counties along the Louisiana and Texas borders, where the Negro population varies from about 27 to 45 percent of the whole.[16] Fifty-four percent of Arkansas' 423 school districts had Negro pupils in 1954 and were maintaining a dual school system.[17]

State laws requiring segregation of the races were extensive. Outside of limited desegregation in state-supported colleges and universities, there was generally a complete pattern of segregation in all areas of community life.

The school population of Arkansas was about 25 percent Negro. Only two school districts in the State, neither with many Negro pupils, began to desegregate in 1954–55. These districts were Fayetteville and Charleston, near the the Oklahoma border.[18] Considering the State as a whole, only a handful of Negro pupils were affected.

School year 1955–56

Two small Arkansas communities voluntarily desegregated their schools in this school year.

Bentonville, in the northwestern corner of the State, admitted its only Negro pupil to the white elemenary school.[19] Hoxie, in northeastern Arkansas

[14] *Id.* at 118.

[15] "Our present law provides for segregation in the public schools, and any decision for integration of the races is premature, as the Supreme Court in its opinion stated that further arguments would be heard and a decree entered." (S.S.N., Sept. 1954, p. 2.)

[16] See *U.S. Census of Population,* 1950.

[17] S.S.N., Sept. 1954, p. 2.

[18] S.S.N., Oct. 1954, p. 2.

[19] A. Stephen Stephan, *The Status of Integration and Segregation in Arkansas,* 25 *J. Negro Ed.* 216 (1956).

on the fringe or an area of the State with a large Negro population, admitted 25 Negro pupils to all grade levels of previously all-white schools on July 11, 1955.[20]

The Hoxie Incident

After a few weeks of operation, bitter opposition stimulated by outside agitation disrupted the Hoxie desegregation program. Protest meetings were held, an effective student boycott was organized, and the school board came under extreme pressure to restore segregation. The board stood firm but closed the summer session early.

On October 24th, the board reopened the schools on an integrated basis. After a few days it sought and obtained a temporary injunction from the Federal District Court against the actions of local and State protest organizations.[21]

Early in December the injunction was made permanent. The court said that the school board members "were authorized and required by the 14th Amendment . . . to desegregate the Hoxie schools after making an official finding on June 25, 1955, that all administrative obstacles had been removed," and that from that point, "all of the individual plaintiffs [school board members] would have been subject to civil and criminal liability under Federal law if they had failed to proceed with desegregation." [22]

Upon appeal the decision of the district court was affirmed. In respect to the right of school authorities to Federal protection in the performance of their duties the court said:

> Plaintiffs (members of the school board) are under a duty to obey the Constitution. Const. Art. VI, clause 2. They are bound by oath or affirmation to support it and are mindful of their obligation. It follows as a necessary corollary that they have a federal right to be free from direct and deliberate interference with the performance of the constitutionally imposed duty. The right arises by necessary implication from the imposition of the duty as clearly as though it had been specifically stated in the Constitution.[23]

School year 1956–57

The only school district to desegregate this year was Hot Springs. The cautious first step was the opening of the high school course in auto mechanics to Negro pupils. This course was held in the school bus garage, away from both white and Negro high schools.[24]

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[20] *Id.* at 216, 217.

[21] Hoxie School District v. Brewer, 135 F. Supp. 296 (E.D. Ark. 1955).

[22] 137 F. Supp. 364, 374 (E.D. Ark. 1955).

[23] 238 F. 2d 91, 99 (8th Cir. 1956).

[24] Wey and Corey, *op. cit. supra* note 58, at 119.

School year 1957–58

The story of Little Rock dominated the school desegregation picture in Arkansas from this point on. The sequence of events will be detailed here even though they extend over more than two school years.

Meanwhile, however, desegregation programs were initiated in three other school districts, Fort Smith, Van Buren and Ozark. In Ozark the few Negro pupils were sent home by the town marshal after two or three weeks of harrassment. They re-entered the former white school in January, 1958, and finished the school year.[25]

The Little Rock Story

When a suit was filed in the Federal District Court on behalf of 33 Negro children, asking their admission to white schools, the Little Rock School Board submitted to the Court a desegregation plan. Desegregation was to begin at the high school level in the autumn of 1957. The Court approved the plan.[26]

Before school opened in September, however, the Chancery Court of Pulaski County issued an order restraining the Board from putting its plan into effect.[27] However, this order was immediately nullified by injunction of the Federal District Court.[28]

On September 2, 1957, the day before school was to open, Governor Orval Faubus dispatched troops of the Arkansas National Guard to Central High School to keep out Negro students. This was done, the Governor claimed, "to prevent violence." In subsequent proceedings, the District Court found that the school authorities had not requested it.[29] On September 21, the District Court issued an injunction restraining State officials from barring Negro pupils by use of the National Guard or any other means.[30]

After the National Guard was removed, there were disorders sufficiently disturbing to cause the Mayor of Little Rock to telegraph the President of the United States on November 7, 1957, requesting that Federal troops he sent at once to restore order.[31]

President Eisenhower dispatched U.S. Army troops to the high school and federalized the National Guard. In the presence of Federal troops, the Court's decree was enforced. The children entered the school under Army protection. The regular troops were withdrawn on November 27 and replaced by the federalized National Guard, who remained there for the rest of the year.

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[25] S.S.N., Oct. 1958, p. 5.

[26] Aaron v. Cooper, 143 F. Supp. 855 (E.D. Ark. 1956), *aff'd* 243 F. 2d 361 (8th Cir. 1957), *cert. denied*, 357 U.S. 566 (1958).

[27] Thomason v. Cooper, Civ. No. 108377, Ch. Ct., Pulaski County Ark., Aug. 29, 1957.

[28] Aaron v. Cooper, Civ. No. 3113, E.D. Ark., Aug. 30, 1957; 2 *Race Rel. L. Rep.* 934 (1957).

[29] Aaron v. Cooper, 156 F. Supp. 220, 225 (E.D. Ark. 1957).

[30] *Id.* at 220, *aff'd, sub. nom.*, Faubus v. U.S., 254 F. 2d 797 (8th Cir. 1958).

[31] Att'y. Gen. of U.S., *President's power to use Federal Troops to Suppress Resistance to Enforcement of Federal Court Orders—Little Rock, Arkansas*, p. 17.

On February 20, 1958, the School Board and Superintendent filed a petition in the District Court asking postponement of the desegregation program. Their position was that the extreme public hostility, engendered largely by official attitudes and actions of the Governor and legislature, rendered impossible the maintenance of a sound educational program at the high school with Negro students in attendance. The Board asked that the Negro students be sent to segregated schools and that desegregation be postponed for two and one-half years. The postponement was granted by the District Court on June 21.[32]

However, the U.S. Circuit Court of Appeals reversed this order on August 18, by a vote of six to one.[33] The majority opinion, written by Judge Marion C. Matthes, said: "The issue plainly comes down to the question of whether overt public resistance, including mob protest, constitutes sufficient cause to nullify an order of the Federal Court directing the Board to proceed with its integration plan. *We say the time has not yet come in these United States when an order of a Federal Court must be whittled away, watered-down, or shamefully withdrawn in the face of violent and unlawful acts of individual citizens in opposition thereto.*" (Emphasis not added.)

The one dissent was cast by presiding Judge Archibald K. Gardner, 90, the nation's oldest active Federal judge, who said: "The action of Judge Lemley [in granting the 2½ year postponement] was based on realities and on conditions, rather than theories." [34]

To resolve this judicial clash, the Supreme Court convened in special term on August 28, and for the first time since the *Brown* decision, heard an individual case regarding school desegregation on the merits. On September 12, the Court unanimously affirmed the judgment of the Court of Appeals. On September 29, the Court handed down its opinion in support of its judgment, stating:

> . . . The Constitutional rights of children not to be discriminated against in school admission on grounds of race or color . . . can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation, whether attempted "ingeniously or ingenuously." [35]

The Court went on to point out that Article VI of the United States Constitution makes that document the "supreme law of the land" and that it is the duty of the Federal Judiciary "to say what the law is." "Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, Sec. 3, 'to support this Constitution.'" Thus, "No state legislator or executive

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[32] Aaron v. Cooper, 163 F. Supp. 13 (E.D. Ark. 1958).
[33] Aaron v. Cooper, 257 F. 2d 33, 40 (8th Cir. 1958).
[34] *Id.* at 41.
[35] Cooper v. Aaron, 358 U.S. 1, 17 (1958).

or judicial officer can war against the Constitution without violating his undertaking to support it." [36]

Immediately after the September 12 decision, Governor Faubus, acting under legislation adopted at a special session of the General Assembly, closed all four high schools in Little Rock. The special election required by the school-closing law occurred on September 27. At that time, voters of the Little Rock school district rejected by 19,470 to 7,561 a proposal to reopen the city's high schools on an integrated basis.[37]

Thereafter, on September 29, 1958, the School Board leased its four high schools to the Little Rock School Corporation for use as private schools. The Circuit Court of Appeals issued a temporary restraining order to invalidate the lease. On November 10 it made this order permanent and instructed the District Court to enjoin the School Board from transferring any of its possessions or operations to a segregated school, and from engaging in any other acts to impede, thwart, or frustrate the execution of the integration plan. The appeals court further directed that the School Board take such affirmative steps as the District Court might direct to carry out the integration previously ordered.[38]

In the school board election of December 1958, three "moderates" were elected to the Little Rock School Board over Governor Faubus' opposition.[39] On February 3, 1959, the District Court rejected the new Board's proposal to open the high schools on a segregated basis and directed the Board to present a new plan before the opening of school in the fall.[40]

On April 27, 1959, the Arkansas Supreme Court by a 4 to 3 majority upheld the State's school-closing law (Act 4) as a valid exercise of State police power not in conflict with the State or Federal Constitution. The Arkansas Constitution, according to the Court, authorizes the legislature to delegate control over the schools to the Governor as well as the local school boards.[41] And on May 4, 1959, this Arkansas court in a unanimous opinion held that the companion legislation (Act 5) which provides that State funds normally spent on a student in a school closed under Act 4, would be paid to a school, public or private, which he might later attend, did not violate the State Constitution.[42] In this case the issue of conflict with the United States Constitution was not considered. The constitutionality of both

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[36] *Id.* at 18.
[37] S.S.N., Oct. 1958, p. 7.
[38] Aaron v. Cooper, 261 F. 2d 97 (8th Cir. 1958).
[39] S.S.N., Jan. 1959, p. 14.
[40] S.S.N., Feb. 1959, p. 14.
[41] Garrett v. Faubus, 323 S.W. 2d 877, 870 (1959).
[42] Fitzhugh v. Ford, 323 S.W. 2d 559 (Ark. 1959).

Act 4 and Act 5 was argued before a three-judge federal court on May 4 1959, and decided on June 18, 1959. This court held that Act No. 4 was "clearly unconstitutional under the due process and equal protection clause of the Fourteenth Amendment, and conferred no authority upon the Governor to close the public high schools in Little Rock." [43]

The Court further held Act No. 5 complementary and dependent upon Act No. 4, and, "as a device for depriving the Little Rock School District of State funds allocable to it for the maintenance of its schools upon a constitutional basis," likewise invalid.[44] It should be noted that the Court called attention to the fact that under Act 5, $71,907.50 had been paid to the private T. J. Raney High School.[45]

On May 5, 1959, prior to this decision of the Federal court, the "moderates" had walked out of a board meeting, and the three pro-Faubus members of the Little Rock School Board dismissed 44 teachers without charges or hearing.[46] Later, Board President Ed. I. McKinley, Jr., a segregationist, explained that teachers who believe that the United States Supreme Court's desegregation decision is the law of the land "have no place in our school system, however qualified professionally." [47] The dismissal provoked the strongest anti-Faubus reaction yet.

Citizens who preferred desegregated schools to none at all, organized a committee to Stop This Outrageous Purge (STOP). Faubusites, including the Capital Citizens Council and the Central High School Mothers' League, struck back with a Committee to Retain Our Segregated Schools (CROSS). One of Little Rock's two daily newspapers, which had formerly supported the Governor's policies, now joined the other in endorsing STOP. After a spirited campaign, a recall election on May 25 gave Little Rock voters a chance to vote "for" or "against" all six members of their School Board. There was a heavy turnout, and the three segregationist Board members were ousted.[48]

Upon the appointment of new members to fill the vacancies created by the recall election, the Little Rock School Board, under the continuing jurisdiction of the Federal Court, proceeded with plans to reopen the high schools in September 1959.[49]

Among the severe problems to be faced was that created by the diverse and inconsistent education that the student bodies of the four

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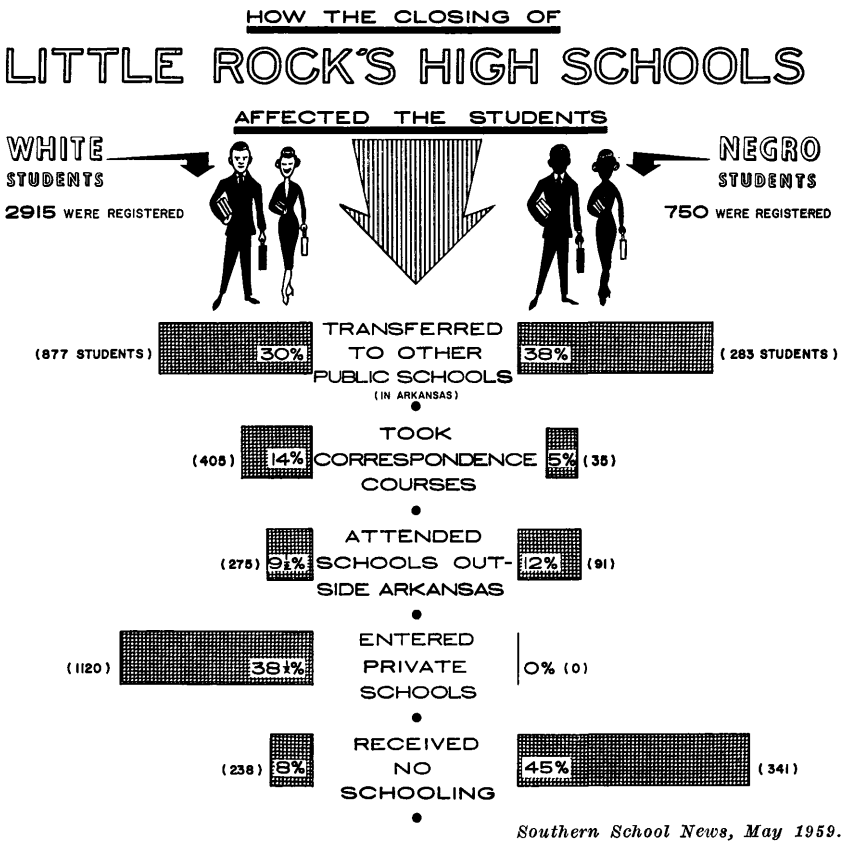
[43] Aaron v. McKinley, Civ. No. 3113, E.D. Ark., June 18, 1959.
[44] *Id.* at 13–14.
[45] *Id.* at 13.
[46] S.S.N., June 1959, p. 2.
[47] *Arkansas Gazette,* May 22, 1959, p. 4A.
[48] *Washington Post,* May 26, 1959, p. 1.
[49] S.S.N., July 1959, p. 8.

CHART XII



Southern School News, May 1959.

closed schools obtained during the school year 1958–59. The court in *Aaron v. McKinley* pointed out that 3,665 pupils were affected by the closing, and that of these 266 white students and 376 Negro did not subsequently attend *any* school. The others obtained some type of formal instruction in public and private schools both within and without the State of Arkansas.[50]

School year 1958–59

There were no new instances of school desegregation in Arkansas in school year 1958–59.

Trouble again occurred at Ozark. Once again the Negro pupils either left school or were sent home after harassment by white stu-

[50] Aaron v. McKinley, *supra* note 43. But note that 643 white pupils were said not to be in any school according to the Superintendent of Schools, Tyrrell E. Powell (S.S.N., May 1959, p. 6).

dents. The superintendent reported the white students to have stated that Governor Faubus "had said they didn't have to go to school with Negroes and they didn't intend to" and that the Governor had said "the Supreme Court is not the law of the land and they didn't have to obey it." [51]

Although desegregation had proceeded without significant incident in Van Buren during the 1957–58 school year, the opening of schools in September, 1958, was amid jeering crowds and a student boycott. Disturbances continued and the Negro students left the schools. The Federal District Court refused to issue an injunction to force the school board to proceed with the desegregation plan. Furthermore, it put the responsibility for the safety of the Negro pupils on the school authorities. Segregationist groups were organized and meetings held. Pressures were exerted upon school board members and administrative personnel. The influence of outside agitators was felt. At a school board meeting at which citizens were invited to speak for and against continuation of the desegregation plan, Angela Evans, the 15-year-old President of the Student Council, spoke in favor of allowing the Negro pupils to return to school and admonished the students and people of the community for their actions, attitudes and treatment of the Negro youngsters. Apparently this was a turning point, for on September 22 the Negro pupils returned to school without further significant incident.[52]

TEXAS

School year 1954–55

Governor Allan Shivers, in running for re-election in the summer of 1954, endorsed measures to resist school desegregation by every legal means. The Texas Commissioner of Education, after consultation with the Attorney General, notified all schools to prepare for 1954–55 operation on the regular segregated basis. Pending the implementing decree, it was held that the State's segregation laws were still in force. The State Board of Education endorsed this position.[53]

Although the Negro population of Texas is 13 percent of the total population, 90 percent of the Negro pupils in the school year 1954–55 lived in 88 counties of East Texas. Forty-one of the State's 254 counties had no Negro scholastic population.[54] In East Texas, four

[51] S.S.N., Oct. 1958, p. 5.
[52] *Id.* at 5, 7.
[53] S.S.N., Sept. 1954, p. 11.
[54] Brief, Attorney General, Texas as *Amicus Curiae,* Brown v. Board of Education, 347 U.S. 483 (1954), Map Appendix III, p. 14.

counties had a population that was more than 50 percent Negro, and in eight others the Negro population exceeded 35 percent.[55]

For the 1953–54 school year, the Attorney General reported that there were 1,953 school districts in the State. Of these, 831 maintained both white and Negro schools, whereas 997 maintained only white schools, and 125 only Negro schools.[56]

"White" colleges in Texas, some voluntarily and some under court order, had been admitting Negro students for several years prior to 1954. These had included some public junior colleges, as well as the University of Texas. However, by virtue of State law and custom, segregation of the Negro race in practically all aspects of community life was the general pattern throughout the State. Even so, in parts of Texas where there were large military installations, the attitudes toward racial segregation appear to have become less rigid.[57]

Six more junior colleges admitted Negroes for the first time in the school year 1954–55, but only one instance of desegregation is known to have occurred at the public school level. Friona, a small school district in the Panhandle, chose to admit its few Negro children to the elementary school rather than provide them with separate facilities or transportation to a distant Negro school. This step, it was estimated, saved Friona $10,000 a year.[58]

School year 1955–56

In September, 1955, 65 districts voluntarily effected school desegregation.[59] By the end of the school year, the number was reported to be 73.[60] Among these districts were the cities of Austin, San Antonio, El Paso, Corpus Christi, and San Angelo. Smaller communities such as Big Springs, San Marcos, and Killeen also took steps. None of the districts were located in "deep-East" Texas, and all had comparatively few Negroes.

No uniformity of plan or method could be discerned in the desegregation steps taken by Texas school districts in this school year. All grades were included in the plan of San Antonio and San Angelo. Other communities such as Big Spring and Austin began with specific grades and instituted a gradual plan.[61] Small communities with few Negro pupils and no Negro school simply absorbed their few Negroes into the white schools. In Karnes County, school districts

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[55] *U.S. Census of Population,* 1950.

[56] Brief, *op. cit. supra* note 54.

[57] See William H. Jones, "Desegregation of Public Education in Texas—One Year Afterward," 24 *J. Negro Ed.,* 348 (1955).

[58] Herbert Wey and John Corey, *Action Patterns in School Desegregation,* Bloomington, Ind., 1959, p. 19.

[59] S.S.N., Oct. 1955, p. 14.

[60] S.S.N., Sept. 1956, p. 12.

[61] Wey and Corey, *op. cit. supra* note 58, at 113–14.

were able to do this. Four adjacent districts in the county announced their plans simultaneously, and by their united front dissipated opposition and gained acceptance of their programs.[62]

Mr. G. B. Wadzeck, the San Angelo Superintendent, in presenting to the Commission the problems and conclusions as viewed by his administrators, said:

> . . . we are definitely of an opinion that the extremist for integration and the extremist for segregation will make no contribution to solving the problem. The problem will be solved by patience and understanding and a realistic desire to do what is right. It simply must be recognized that this is a very serious and delicate situation, and it will be several generations before it is completely solved.[63]

Mr. Wadzeck went on to state that in planning or administering a desegregation program, care should be taken not to make the Negro pupils a special group by granting privileges not accorded others, for this would again set them apart as they had been set apart by segregation practices.[64]

School year 1956–57

By the end of this school year 49 additional school districts were reported to have desegregated.[65] Two significant events dominated the desegregation picture in Texas this year. The first was the Mansfield disturbance; the second, the passage of legislation, the effect of which was to impede further desegregation efforts.

Mansfield.—In 1955, the Federal District Court had dismissed, without prejudice, a suit seeking an injunction that would have forced desegregation on the ground that such relief under the circumstances would be "precipitate and without equitable justification."[66] On appeal, the circuit court reversed the district court and held that the Negro plaintiffs were entitled to a declaration of their rights, and to a prompt start by the School Board to effectuate desegregation.[67] Upon remand of the case, the district court on August 27, 1956, declared the right of the Negroes to admission to the Mansfield High School, and enjoined the school authorities from denying them this right.[68]

There was little time for community preparation or orientation before school opened and no attempt was made to achieve any. Dis-

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[62] *Id.* at 138.
[63] Nashville Conference, pp. 44–45.
[64] *Ibid.*
[65] S.S.N., Sept. 1957, p. 10.
[66] Jackson v. Rawdon, 135 F. Supp. 936 (N.D. Tex. 1955).
[74] But see Chap. V. (Education), p. —, *infra.*
[68] 135 F. Supp. 936 (N.D. Tex. 1956).

orders occurred, and Governor Shivers ordered Texas Rangers to help keep the peace. He also urged the local school authorities to transfer out of the district any pupils "whose attendance or attempts to attend Mansfield High School would reasonably be calculated to incite violence." [69] The Governor's statement implied criticism of the United States Supreme Court and of the NAACP for having, by their actions, caused the Mansfield situation.[70]

Mansfield was the first public school district in Texas to be ordered to desegregate. The only newspaper took a pro-segregationist position, and crowds of extremists prevented Negro pupils from registering at the white school.[71] The School Superintendent chose not to take a position of leadership and planned to stay away from the school the first day. On the second day, the Superintendent appeared at the school and was quoted as saying to the crowd, "Now you guys know I'm with you, but I've got this mandate hanging over my head." [72] The passive attitude of local police authority has also been cited as a reason for the failure of desegregation efforts at Mansfield.[73] In spite of the court orders, there has been at this writing no actual desegregation of the Mansfield High School.

New legislation

Prospects for further instances of school desegregation were virtually foreclosed in Texas when the Governor, on May 23, 1957, signed a bill providing that any future desegregation could occur only after approval by the qualified electors of the district in a special referendum.

This law took effect immediately and provided severe penalties for violation by school districts or individuals. Districts already desegregated were not affected.[74] The constitutionality of this legislation has been put in issue, but efforts to get a determination have been unsuccessful.[75]

School year 1957–58

School desegregation was at a standstill in Texas during this school year owing to the passage of the referendum law. However, at Pleasanton, a farming community near San Antonio, in the first test of

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[69] 1 *Race Rel. L. Rep.* 885 (1956).
[70] *Ibid.*
[71] Wey and Corey, *op. cit. supra* note 58 at 36, 37.
[72] *Id.* at 157, 158.
[73] *Id.* at 189.
[74] But see Chap. V. (Education), p. 191, *infra.*
[75] See Dallas Independent School District v. Edgar, 255 F. 2d 455 (5th Cir. 1958). S.S.N., Jan. 1959, p. 5.

the new law, voters approved integration of Negro pupils into white schools by 343 to 88 in a referendum held in October, 1957.

A factor influencing the vote was no doubt the fact that the community was faced with loss of accreditation of the whole school system, because the Texas Education Agency had declared inadequate the separate facilities for the 36 Negro pupils.[76] The Negro children were immediately admitted to the white schools.

School year 1958–59

Another Texas school district voted in favor of desegregation and admitted Negro high school pupils to its white school, Bloomington, near Victoria on the Gulf Coast. Victoria school officials had given notice that its schools could no longer accept Bloomington's 16 Negro high school students. The choice for Bloomington was again between admitting the Negro pupils to its white school or losing State accreditation. The separate Negro elementary school was maintained.[77]

The Boerne school district in Kendall County became the first district to reject desegregation in a referendum held in response to the new State law. In this referendum the voters rejected the proposal that the two Negro pupils in the district be admitted to the white school.[78]

MISSOURI

School year 1954–55

Missouri experienced desegregation in more school districts in the first year than any other State. A report in the autumn of 1954 showed the following progress toward integration:

Integration at both elementary and high school levels in 30 districts.

Integrated high schools but segregated elementary schools in 58 districts.

Integrated elementary schools but segregated high schools in 11 districts.

Continued operation of Negro schools, but Negro pupils given option of attending other schools in 11 districts.[79]

This accounted for 110 or about 50 percent of the State's 216 biracial school districts. However, as was the case in other States, the Missouri counties with the highest Negro population took little or no action the first year.[80]

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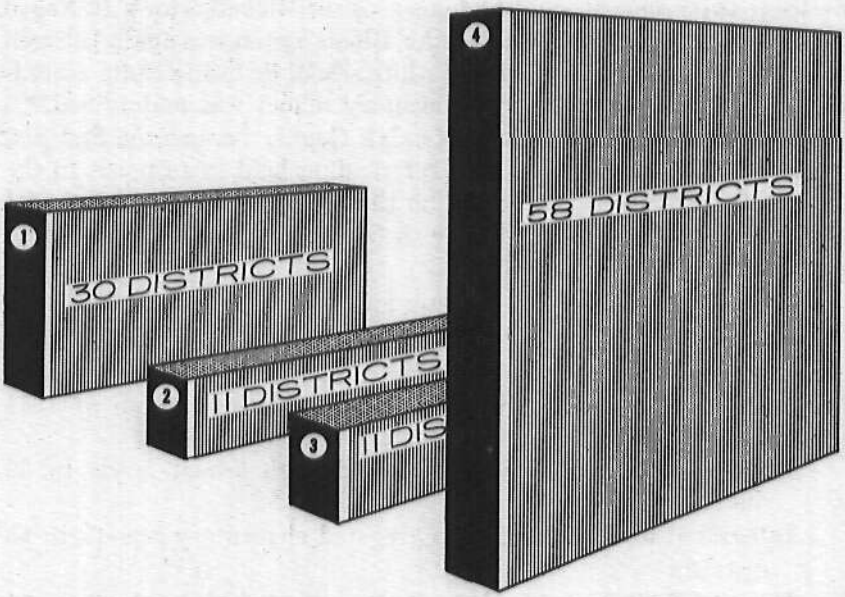
[76] S.S.N., Nov. 1957, p. 5.
[77] S.S.N., Sept. 1958, p. 14.
[78] *Ibid.*
[79] S.S.N., Nov. 1954, p. 12.
[80] See desegregation map, *Ibid.*

Chart XIII

MISSOURI, AUTUMN 1954: EXTENT OF DESEGREGATION



1. Integration at both elementary and high school levels—30 Districts.
2. Continued operation of Negro schools but Negroes given option to attend other schools—11 Districts.
3. Integrated elementary schools, segregated high schools—11 Districts.
4. Integrated high schools, segregated elementary schools—58 Districts.

Within Missouri's 115 counties, there were some 4,000 school districts, ranging from one-school units to the major systems of St. Louis and Kansas City. Negroes were attending public schools in only 5 percent of the districts but in 60 percent of the counties.[81]

Outside of the two largest metropolitan areas of St. Louis and Kansas City, most of Missouri's Negro population is concentrated in two sections. One, known as "Little Dixie," borders the Missouri River between Kansas City and St. Louis. The other is in the "Bootheel" or "Delta" area, a wedge of land in the extreme southeastern corner of the State between Arkansas and Tennessee.[82]

The State did not have extensive segregation laws outside of those relating to public education. However, in the outlying sections with the highest percentage of Negroes, segregation in facilities both public and private was generally the practice. In Sikeston, for example, on the fringe of the "Bootheel" section, Negroes were excluded from the parks and the public library. Though transportation facilities were open to them, they could not secure employment in units such as the police and fire departments.[83] Even so, this community had positive local leadership in favor of desegregating the schools, and early decided to follow such a course.

School year 1955–56

In October, 1955, it was estimated that nearly 57,000, or 85 percent of the 67,000 Negroes in the schools of Missouri were attending desegregated classes. Some 135 of 172 high school districts were reported to have begun the process by this time, and in 69 of these districts desegregation extended down through the elementary school grades.[84] New instances of desegregation were found in 36 elementary school districts, 1 junior high school, and 19 high schools.[85]

The transition of school districts throughout the State was distinguished by the absence of disturbing incidents.

School year 1956–57

By the end of the school year, only five high school districts in Missouri remained segregated, and one of these had announced desegregation plans to be effective the following September. It was estimated that fewer than 13 percent of Missouri's 68,000 Negro pupils remained in segregated school systems.[86]

All of the high schools and most of the elementary schools that remained segregated were in the extreme southeast corner of the State—the cotton-growing "Bootheel" of the Missouri delta country. However, desegregation did occur

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[81] S.S.N., Oct. 1954, p. 10.
[82] S.S.N., Nov. 1954, p. 12.
[83] Report to Commission, Missouri State Advisory Committee (1959), p. 67.
[84] S.S.N., Oct. 1955, p. 5.
[85] Southern Education Reporting Service, *Status of School Segregation—Desegregation in the South and Border States,* Oct., 1958, p. 17.
[86] S.S.N., June 1957, p. 14.

at the high school level in the "Bootheel" town of Morley, where 35 Negro pupils attended school with about 600 whites.[87]

A potentially explosive incident occurred near Sikeston when it was first reported that Negroes had murdered a white high school boy and raped a white high school girl. The desegregation program was temporarily disrupted there and tension mounted throughout the area until it was discovered that the perpetrators of the crime were whites disguised as Negroes.[88]

School year 1957–58

Desegregation moved ahead in all areas of the State except the "Bootheel" counties, where public resistance to the process continued to cause a deadlock in most communities. In all, 16 school districts initiated desegregation programs in this school year.[89]

The Supervisor of Secondary Instructions in St. Joseph reported on the experience of that community as follows:

> In general, the process of integration has been working very well, and I am convinced that the colored students now enrolled are benefiting by a stronger, broader, more challenging program of instruction than it was possible to offer them in a separate school.[90]

School year 1958–59

This school year saw initial desegregation steps taken at the elementary school level in three communities in the north-central part of the State.[91] Missouri no longer keeps records to indicate the race of its pupils, and no State agency is still tabulating the desegregation process. However, some 95 percent of the State's Negro pupils are officially estimated to live in districts where schools are desegregated to some degree.[92]

In only two counties have no steps been taken toward desegregation, Pemiscott and New Madrid, both in the "Bootheel". Public officials of these counties claim that the people of both races are satisfied, and that no desegregation steps are in prospect.[93]

KENTUCKY

School year 1954–55

The day the *School Segregation Cases* were decided, Governor Lawrence Wetherby announced: "Kentucky will do whatever is necessary to comply with the law." The attorney general stated that the decision

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[87] *Ibid.*
[88] Report to Commission by the Sikeston Superintendent of Public Schools.
[89] Southern Education Reporting Service, *op. cit. supra* note 85.
[90] S.S.N., Sept. 1957, p. 13.
[91] S.S.N., Sept. 1958, p. 12.
[92] *Ibid.*
[93] Report to Commission, Missouri State Advisory Committee, 1959.

nullified the State's segregation laws but advised the school officials of Kentucky that these laws would be effective until the final decree of the U.S. Supreme Court.[94] The State Board of Education thereupon advised local boards to continue segregation for the school year 1954–55. On July 2, 1954, the Governor appointed a biracial committee to advise the State on the problems of ending segregation.[95] On June 23, of the following year, after the final decree in the *Brown* case, the State board urged local school authorities to begin desegregation, "as rapidly as conditions warrant." [96]

Kentucky has traditionally been oriented toward the Deep South, but the patterns of segregation have evolved more through custom and a way of life than by virtue of State law. There were few local ordinances requiring segregation; and in many parts of the State, public meetings and entertainment events were unsegregated. Large cities did not have segregation on buses, and discrimination in the exercise of the franchise was not widespread. At the college level, desegregation of public and private institutions had been proceeding slowly since World War II.[97]

Kentucky's Negro population is greatest in Louisville and in several southern counties along the Tennessee border. The counties of eastern Kentucky have very small Negro populations. In 1950, only one county in the State had more than 20 percent Negroes.[98]

There were 224 school districts in the State, composed of 120 county districts and 104 independent (city) districts. In 30 counties and in 71 districts there were no Negro schools, either because there was no Negro school population or a very small one that was sent to other districts.[99]

School year 1955–56

Kentucky's first public school desegregation occurred in Lexington on June 6, 1955, when a Negro girl was admitted to a summer school class. At the opening of schools in September, 14 county and 15 independent school districts enrolled white and Negro pupils in the same schools. Eight other districts adopted a desegregation policy but had no Negro applicants for enrollment in formerly all-white schools. All desegregation activity was voluntary.[1]

All but one of the school districts that desegregated this year were located in the eastern part of the State, where the Negro population was very sparse. As a result, less than 1 percent of the State's Negro

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[94] S.S.N., Sept. 1954, p. 7.

[95] *Ibid.*

[96] S.S.N., July 1956, p. 8.

[97] A. Lee Coleman, "Desegregation of Public Schools in Kentucky," 24 *J. Negro Ed.* 248, 250, 251 (1955).

[98] *U.S. Census of Population,* 1950.

[99] S.S.N., Sept. 1954, p. 7.

[1] Kentucky State Department of Education, *Report on Integration,* 1955. (All subsequent statistics, except where otherwise noted, are taken from desegregation reports supplied to the Commission by the Kentucky State Department of Education.)

school population and only 2.3 percent of the white attended desegregated schools this year.

The usual method of desegregation was for specified schools to be opened to those Negro pupils who desired to apply for transfer.

In Wayne County two high schools and a one-room elementary school were opened to Negroes. In the latter case, six Negro children who lived within walking distance of the white school had their first chance to attend *any* school. Prior to this, the school bus that took other Negro children to a distant Negro school was "too many mountains away" for them to reach.[2]

The following is an official appraisal of desegregation efforts in Kentucky the first year:

> About one-half of the districts report no problems prior to the beginning. All the rest indicated that the public had to be educated to the change and when an understanding was accomplished the problems were solved. There was no organized opposition in any of the districts and individual opposition was very little. Usually, it was in the form of anonymous telephone calls and letters to the officials and to the local press. What little individual opposition there was soon subsided and had no consequence after the school got under way. Practically no problems have come up as a result of integration. In one or two cases social functions in the school gave some concern. Community adjustment to the change is most encouraging and it shows what people can do in solving local problems when they have a mind to do so.[3]

School year 1956–57

In the fall of 1956, 33 additional county districts in Kentucky and 30 independent districts enrolled Negroes in formerly all-white schools. The number of districts with an "open" policy but without Negro applicants increased from 8 to 18. Except for the one high school in Adair County that desegregated under court order,[4] all steps were taken voluntarily.

While most desegregation occurred in the northern part of the State, where there was less concentration of Negro population, some school districts with rather large Negro populations did take steps in this school year. Numerically, 110,178 white students and 7,978 Negro students were in schools attended by both races. The desegregation of the Louisville schools was largely responsible for this great increase over the 1955–56 figures.

The experience of Logan County, located on the Tennessee border north of Nashville, was typical of that of many county districts. Negro pupils from all over Logan County had been attending a Negro high school in Russellville, an independent district. The combined Negro enrollment of both districts was not sufficient to maintain an accredited high school. Although the people of the county were almost 100 percent against desegregation, it was recognized

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[2] S.S.N., July 1955, p. 8.
[3] Kentucky State Department of Education, *Report on Integration, Oct.* 1955, pp. 7, 8.
[4] Willis v. Walker, 136 F. Supp. 177, 181 (W. D. Ky. 1955).

that the step had to be taken. A careful program of preparation of pupils and community was undertaken by the school administration with the help of various community groups. As a result, when the 63 Negro high school pupils were enrolled in the white schools of the county, "Principals and teachers agreed that opening day 1956 was the most uneventful day they had ever witnessed." [5]

The most significant events of this school year were the desegregation of the Louisville schools and the disturbances at Clay and Sturgis.

Louisville.—The pupil population in the schools of Louisville in 1956 was slightly more than 25 percent Negro.

"Louisville is not a typically Southern city, but it has a strong southern flavor," stated the Superintendent of its schools, Dr. Omer Carmichael, in his report at the Commission's Conference in Nashville. Dr. Carmichael felt that in years past, Louisville had shown more rigid attitudes of segregation in some respects than, say, Lynchburg, Virginia, where he had worked for 13 years before coming to Louisville. In Louisville, for example, he had considered it wise to wait four years before arranging for Negro and white teachers to meet together, an accepted occurrence in Lynchburg.[6]

On the day of the Supreme Court's 1954 decision, Dr. Carmichael announced that as Superintendent of Schools he would expect to carry out the law, without undue delay and with no effort at subterfuge. In carrying it out, he further announced, the first consideration would be for the children, for whom the school existed. The second would be for the teachers (and he explained that no teacher need fear the loss of a job). The third consideration would be for the parents.[7]

Dr. Carmichael and his staff moved at once into a period of intensive preparation. For the first semester, they concentrated on children and teachers. They asked every teacher to work toward one simple goal: that the white children should all be ready to meet Negro children more than half way when the time came. The teachers were also asked to discuss the matter informally with friends. With nearly 50,000 children soon talking at home about the coming change, the community was well prepared for the public meetings that began at the end of the year.[8]

The plan, developed by the community as a whole, was presented to the Board in mid-November. Thirty days were allowed to let anyone submit in writing any suggestions for modification. "In the 30 days, the amazing thing was that one and only one suggestion was offered . . . That was rejected because it had been carefully studied before. The plan was adopted in mid-December, and we proceeded to work to develop it. Briefly, we redistricted the entire city, wiping

[5] Nashville Conference, pp. 180–82.
[6] *Id.* at 151.
[7] *Id.* at 152.
[8] *Ibid.*

out the white districting and the Negro districting, redistricting without regard to race, giving each building its load of pupils, with no gerrymandering or unnatural boundaries of any kind whatsoever." [9] Parents were notified of their child's school assignment and given the opportunity to request a transfer. "What I want to call attention to particularly," said Dr. Carmichael, "is that we didn't leave the question of segregation to the initiative of the parents. It took parents' initiative to get out of a desegregated set-up if, by residence, desegregation came." [10]

Dr. Carmichael recalled that they "were threatened with some picketing," but this did not materialize except at the Superintendent's office. School opened peacefully.

"We all agreed that it was the smoothest opening that we had ever had," Dr. Carmichael reported.[11] This first year saw 73.6 percent of the total student population in racially mixed classes.

Desegregation in Louisville was increased a little each year, and in 1959, 78 percent of Louisville's pupils were in bi-racial schools. Actually 88 percent of the white children were in these schools, and only 54 percent of the Negroes.[12] The all-Negro and all-white schools were taking care of equal numbers of each race.

Clay and Sturgis.—Sturgis, in Union County, is a coal mining town of about 3,000 people. Of the county school enrollment, 10.9 percent are non-white. Union County borders the Ohio River about 170 miles below Louisville. The village of Clay, 11 miles southwest of Sturgis in Webster County, has a population of 1,900. The county school enrollment is approximately 11 percent Negro.[13]

On August 31, 1956, nine Negro students registered for admission to Sturgis High School. When they appeared at school for assignment on September 4, they were turned back by a group of 500 citizens. The Governor sent the National Guard and tanks at once, and shortly thereafter militia were also sent to Clay where similar trouble broke out on September 7, 1956. A crowd of 100 persons gathered to prevent enrollment of Negro children at the elementary school in Clay. The troops escorted Negro children to school and prevented disorder, but a white boycott developed.

Mass meetings attended by as many as 2500 persons resulted in the formation of branches of the White Citizens' Council. The Council urged a white boycott of the schools. This was highly effective and costly to the school systems in loss of State aid based on average daily

[9] *Ibid.*
[10] *Id.* at 153.
[11] *Ibid.*
[12] Commission Questionnaire; Official Report of the Superintendent to the Louisville School Board, Oct. 6, 1958.
[13] S.S.N., Oct. 1956, p. 3.

attendance. No attempt was made to enforce the compulsory attendance laws.

On September 13, 1956, the Attorney General advised both County school boards that the United States Supreme Court decree placed responsibility for an orderly process of desegregation on local school authorities. Therefore, he continued, an individual parent had no right to enroll a child in a school without some action of the school board, taken voluntarily or upon Court order opening the school to such children. Since the school boards had taken no action in either case, they were advised that the Negro children were illegally enrolled. Both boards voted immediately thereafter not to permit the enrollment, and the Negro children were withdrawn and returned to Negro schools. White attendance returned to normal and the National Guardsmen were withdrawn.[14]

The disorder in both Sturgis and Clay may have been due in part to the fact that the white population was taken completely by surprise, since the registration by the Negroes was on their own initiative. A local mine union official was reported to be one of the leaders of the protesting crowd, which included the unemployed, the retired, and rural people whose farming tasks were not too pressing. At least half of the crowd in the early days of the trouble at Sturgis were women.[15]

Court orders led to the formal opening of both Union and Webster County schools to Negroes in 1957,[16] but no Negroes have enrolled in formerly all-white schools in Webster County to date.

Boycotts in protest against desegregation also occurred at Weaverton and Henderson. In contrast to the events at Clay and Sturgis, the boycott against the desegregated schools in Henderson County, which is adjacent to Sturgis' Union County, was quickly abandoned under threats of court action against anyone interfering with the operation of the schools.[17]

School year 1957–58

Negroes were admitted to formerly all-white schools in six more county districts and in two additional independent districts. Fifty-four percent of the State's school districts remained segregated.

Court orders effected desegregation in two school districts.[18] In Sturgis, where eighteen Negro pupils were enrolled under State police protection, the local White Citizens' Council, unsuccessful in attempts to resist desegregation, opened a private school for white students at

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[14] *Ibid.*

[15] Wey and Corey, *op. cit. supra* note 58, at 29, 38.

[16] Garnett v. Oakley, Civ. No. 721, W.D. Ky., Jan. 23, 1957, 2 *Race Rel. L. Rep.* 303 (1957); Gordon v. Collins, Civ. No. 720, W.D. Ky., Jan. 15, 1957, 2 *Race Rel. L. Rep.* 304 (1957).

[17] S.S.N., Oct. 1956, p. 3.

[18] Union County (Sturgis): note 16, *supra;* Scott County: Dishman v. Archer, Civ. No. 1213 E.D. Ky., Jan. 17, 1957, 2 *Race Rel. L. Rep.* 597 (1957).

Grove Center.[19] This is believed to be the first private segregated school opened to avoid school desegregation.

School year 1958–59

Three county school districts in Kentucky initiated desegregation programs in this school year. Two of these were under court order.[20] In all cases, desegregation was at the high school level. In addition, five independent districts voluntarily admitted Negroes to formerly all-white schools.

On March 16, 1959, the State Board of Education placed 39 small public high schools on an emergency rating—the lowest rating at which they can remain open. Nine of these were all-Negro schools, seven of which were in segregated districts. Educators expressed the view that this action could be expected to increase school consolidation and integration programs.[21]

For the State as a whole, 27 percent of the white school population and 28.8 percent of the Negro school population were in desegregated schools.

OKLAHOMA

School year 1954–55

When Oklahoma became a State in 1907, it adopted laws forbidding miscegenation and requiring segregation in schools and public transportation. Segregation in public facilities such as parks and libraries, and in public accommodations such as hotels and restaurants, came later and was rather complete throughout the State in 1954. Though more southern than northern in its racial mores, Oklahoma does not have the long history of segregation that is found in the Deep South.[22] Court orders in 1948 and 1950 required admission of Negroes to the University of Oklahoma.

Most of the State's Negro population is located in the southeastern section along the Texas border, known as the "Little Dixie" area, and in the east-central counties.

The United States Office of Education reported 1902 school districts in the State in the school year 1953–54, with 297 Negro elementary schools and 96 Negro secondary schools.[23] Many districts had no Negroes or Negro schools, but the exact number is uncertain.

The Attorney General of Oklahoma, in his brief before the United States Supreme Court as a "friend of the court" during consideration of the implementating decree in the *School Segregation Cases*, de-

[19] S.S.N., Oct. 1957, p. 10.

[20] Fulton County: Wilburn v. Holland, 155 F. Supp. 419 (W.D. Ky. 1957); Owen County: Grimes v. Smith, Civ. No. 167 (E.D. Ky., Feb. 20, 1958), 3 *Race Rel. Rep.* 454 (1958).

[21] S.S.N., April 1959, p. 11.

[22] See Perry and Hughes, "Educational Desegregation in Oklahoma", 24 *J. Negro Ed.* 307 (1956).

[23] U.S. Department of Health, Education and Welfare, Office of Education, *Statistics of State School Systems*, 1953–54, pp. 34, 106.

clared that his State intended to comply fully with the desegregation decision just as soon as remedial legislation could be passed to correct the separate financial structure of the school system.[24]

On April 5, 1955, the electorate of the State approved a constitutional amendment that merged the previously separate white and Negro school budgets.[25] The State policy for the school year 1955–56, outlined at a joint conference between the Governor, the Attorney General, the State Board of Education, and the State Education Superintendent, was issued June 17, 1955. It did much to foster desegregation in the State. Small Negro schools, whose "isolation" had formerly been condoned, were now subjected to the same attendance requirements as white schools. This meant that if enrollment was below standard, State funds would be cut off unless genuine isolation could be proved.[26]

Governor Raymond Gary announced that school boards contemplating defiance of the Supreme Court's mandate would get no aid or comfort from the State.[27]

School year 1955–56

With the opening of schools in September, 1955, at least 270 schools in Oklahoma, most of them in the northern counties, had one or more classes attended by both races. Some degree of desegregation was reported in 139 school districts.[28] In many cases, a small Negro school was closed and the student body absorbed by white schools.

The attendance areas for all schools in Oklahoma City were redrawn to create a single rather than a dual system, but pupils assigned to schools that were predominantly of the other race were permitted to transfer. All requests for transfer have been honored.[29] As a result not more than ten schools in the city have had a mixed enrollment at any one time.[30] In the school year 1958–59, only 8 of the city's 91 schools were attended by both races.[31]

Dr. Jack F. Parker, representing Oklahoma City at the Commission's Nashville Conference, stated that desegregation of other public facilities prior to school desegregation had helped make the transition easier in that city.[32] Dr. Parker also credited the success of desegregation in the State as a whole to the strong leadership of the Governor and legislature, and to the general absence of strong feelings about segregation.[33]

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[24] Brief, Attorney General Oklahoma as *Amicus Curiae,* filed Nov. 13, 1954, Brown v. Board of Education, 347 U.S. 483 (1954), pp. 4, 12.

[25] Amendment art. X, sec. 9 of Okla. Const., adopted in special election April 5, 1955, 1955 Supp. Okla. Stat., p. 7.

[26] S.S.N., July 1955, p. 7.

[27] *Ibid.*

[28] S.S.N., Oct. 1955, p. 7.

[29] Nashville Conference, p. 96.

[30] Commission Questionnaire.

[31] Nashville Conference, p. 97.

[32] *Ibid.*

[33] *Id.* at 100.

Tulsa, the State's other large city, adopted a desegregation plan similar to that of Oklahoma City. The city was redistricted, and, due primarily to the concentration of Negro population in one district, less than 3 percent of the Negro pupils attended school with white children. The editor of the *Tulsa Tribune* characterized the result as "the essence of segregation with technical integration." [34]

In Muskogee, Okla., the Negro population is concentrated in one residential area, which has new and modernized school facilities. This has helped to keep desegregation at a minimum.[35] Mr. Claude C. Harris, the Assistant Superintendent of Schools at Muskogee, explained the desegregation plan:

> The pupils merely present themselves to the school that they would like to attend, and if this Negro child is within the boundary of the white school, and it is closer to him by the regular distance that he would have to travel than is the Negro school, he or she is permitted to attend the white school.[36]

In this community of about 1,800 Negro school children, 22 were enrolled in white schools this first year. After three years of desegregation the number had increased to 32.[37]

School year 1956–57

In January 1956, Oklahoma's State Board of Education adopted a policy that required the total number of white and Negro students to be combined in computing the number of teachers for whom State aid would be paid. It also required that the transportation area for which State aid would be allowable must be the same for white and Negro pupils. It was estimated that 175 teachers would be eliminated and many Negro schools closed at a saving of up to one million dollars.[38]

A survey by the State Superintendent of Public Instruction revealed that 440 schools were conducting mixed classes. Of these, 178 were high schools, 90 were junior high schools, and 172 were elementary schools.[39] When Negro pupils were admitted under court order to a high school in the Earlsboro District of Pottawatomie County in January 1957,[40] it was reported to be the 184th Oklahoma district to desegregate.[41]

In April 1957, the legislature raised from 25 to 40 the minimum average daily attendance on which State aid would be paid for high

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[34] S.S.N., June 1956, p. 15.
[35] Nashville Conference, p. 31.
[36] Nashville Conference, pp. 31–32.
[37] *Id.* at 31, 33.
[38] S.S.N., Feb. 1956, p. 4.
[39] S.S.N., Nov. 1956, p. 2.
[40] Carr v. Cole, Civ. No. 7355 W. D. Okla., Jan. 23, 1957. 2 *Race Rel. L. Rep.* 316 (1957).
[41] S.S.N., Feb. 1957, p. 14.

school teachers.[42] This eliminated State aid for 200 schools, many of them all-Negro. To bolster this attempt to do away with sub-standard schools, and because communities indicated they would keep them open with their own resources and with reduced teaching staffs, the State Board of Education adopted a policy of withholding accreditation from any district not employing at least five teachers, at least three of whom were teaching full time in the high school.[43]

These measures forced many districts to desegregate in the autumn of 1957.

School year 1957–58

Governor Gary announced that the State was 75 percent integrated at the beginning of the 1957–58 school year. He stated that $750,000 had been saved by the desegregation program, with a resulting availability of additional classrooms and the lifting of teachers' salaries above the National average.[44]

By the end of the school year, it was reported that 216 of the 271 biracial school districts had desegregated or announced desegregation plans.[45]

School year 1958–59

Seven additional districts in Oklahoma were reported to have desegregated in September, 1958, four of them in the "Little Dixie" area where resistance had been strongest.[46]

The increased financial burden occasioned by the above-mentioned changes in State law and policy has brought about desegregation decisions in even the most resistant areas. Similarly, desegregation in one community or district has sometimes set off a chain reaction that forced one or more other districts to desegregate. This has happened where two or more districts had been jointly operating or financing a Negro school.[47]

TENNESSEE

School year 1954–55

Geographically, Tennessee has three distinct sections. In mountainous East Tennessee the Negro population is generally very small, except in Knoxville and Chattanooga. In the cotton country of West Tennessee near the Mississippi River, there are large concentrations of Negroes. The counties of Middle Tennessee generally reflect the State average of 16.1 percent Negro population.

The patterns of segregation in areas of community life other than public schools were generally strong and complete. However, in

[42] Act of April 2, 1957, Okla. Laws 1957, p. 502.
[43] S.S.N., May 1957, p. 10.
[44] S.S.N., Oct. 1957, p. 11.
[45] S.S.N., May 1958, p. 12.
[46] S.S.N., Sept. 1958, p. 15.
[47] See *Ibid.* for examples.

1952, as a result of litigation, Negroes were admitted to the University of Tennessee[48] at Knoxville. Also in the early 1950's, Negroes were admitted to Scarritt College, Vanderbilt University, and George Peabody Teacher's College, all in Nashville.

Governor Frank Clement in 1954 promptly noted that the decision in the *School Segregation Cases* represented the ruling of a judicial body recognized as supreme in interpreting the law of the land. He went on to explain that no change was anticipated in the Tennessee school system in the near future since the final decree had not been entered and the states had been invited by the Court to participate in further deliberations.[49]

There were a total of 152 school districts in the State, including 95 county school systems and 57 municipal systems. Both Negro and white children were reported to be enrolled in 141 districts.[50]

In September, 1954, Catholic parochial schools were opened to Negroes in Nashville. About 50 white students withdrew, but the program was reported to be very successful.[51]

No public school desegregation occurred in this school year.

School year 1955–56

The Town Council of the Atomic Energy Commission town of Oak Ridge in Anderson County passed a resolution in December 1954, requesting abandonment of segregation in the public schools of that town. Strong opposition developed, but an attempt to recall the chairman of the Council failed.[52]

On January 11, 1955, the School Superintendent announced that schools would be desegregated in September. At this time, the schools were supported entirely from federal funds, although they were technically under the supervision of the Anderson County Board of Education for administrative matters. The plan called for strict districting and the elimination of junior and senior high school grades in the Negro school.[53]

In September 1955, 45 Negro pupils enrolled in one formerly all-white junior high school, and 40 Negro pupils enrolled in the "white" high school.[54]

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[48] Gray v. University of Tennessee, 97 F. Supp. 463 (M.D. Tenn. 1951), *appeal dismissed*, 342 U.S. 517 (1952), (question became moot upon admission of appellant to University).

[49] S.S.N., Sept. 1954, p. 14.

[50] *Ibid.*

[51] *Nashville Tennessean*, June 5, 1955, p. 14A.

[52] George N. Redd, "Educational Desegregation in Tennessee," 24 *J. Negro Ed.* 333, 338 (1955).

[53] S.S.N., Feb. 1955, pp. 11, 12.

[54] S.S.N., Oct. 1955, p. 12.

Chattanooga's School Board announcement that it would comply with the Supreme Court ruling was reversed when forces of opposition were organized.[55]

School year 1956–57

The first admission of Negroes to a Tennessee public school occurred at Clinton High School in Anderson County, a county with a 3.1 percent Negro population according to the 1950 U.S. Census.

As early as 1950, efforts of Negroes to enroll in Clinton High School had failed to win court support. However, the action of the Supreme Court in 1955 was followed on January 6, 1956, by a Federal District Court decree stating that Anderson County should desegregate its high school students starting not later than the beginning of the next fall term.[56]

On August 20, 15 Negroes registered for the high school. The principal told them that they were free to participate in athletics and to attend social events, but warned that there would be "no mixing." When school opened on Monday, August 27, 12 of the 15 Negroes appeared.

"It was then that there appeared on the scene a professional agitator," recalled R. G. Crossno, a member of the County Board of Education, speaking at the Commission's Nashville Conference. He was referring to John Kasper, Executive Secretary of the Seaboard White Citizen's Council, Washington, D.C. "There started mass gatherings, mob action, and violence. They would surround the school, use any and every form of intimidation, and, in some instances, went inside the school building with their activities."

School attendance dropped from 750 to 66. An order from the Federal District Judge enjoined the agitators against interfering with the operation of the school, but the gathering only moved to the Court House lawn a few yards away.[57]

Kasper called on the principal, D. J. Brittain, Jr., and told him to "run the Negroes off, or resign." The principal told him he was going to obey the Federal Court order, and that he would resign only if more than half of the school parents wished it. That night, Kasper's mass meeting drew 500 persons.

A day later, the students voted 614 to 0 that the principal should remain. Kasper's mass meeting swelled that night to more than 1,200. He was then served with a warrant by the United States Marshal, temporarily restraining him from hindering or impeding integration

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[55] S.S.N., June 1956, p. 6.

[56] McSwain v. County Board of Education of Anderson County, 138 F. Supp. 570 (E.D. Tenn. 1956).

[57] Nashville Conference, p. 128.

of the school.[58] On August 31, he was found guilty of contempt and sentenced to imprisonment for one year.

There was considerable disorder at the school, and Negro students were attacked. Local enforcement agencies, unable to control the mob, asked the Governor to send State aid. The Governor at once dispatched 100 State Highway Patrolmen. They were relieved the next day by 633 National Guardsmen, some of whom remained on duty until September 11. By September 15 the high school was operating on a normal basis. However, violence again flared in late September, with an explosion near the home of a Negro student.

Little harassments of the Negro students began to increase in November and became serious enough to keep them at home. Their parents demanded protection for them, and refused an offer by the school board to send them to an all-Negro school outside the county.

On December 3, 1956, the Board of Education forwarded a resolution to the United States Attorney General, asking Federal aid in enforcing the District Court desegregation order.[59]

On December 4, a local minister felt that it was his duty to escort the colored children to school. After leaving them, he was assaulted by a small mob. With local tension mounting rapidly, the principal recommended that the School Board close the high school, and it did.

A group of citizens, including the Mayor, at once conferred with the Federal District Attorney in Knoxville, and the following day the United States District Court issued an order of attachment against 16 persons. They were charged with contempt and with engaging in acts of violence toward the Negro students, as well as for attempting to intimidate school officials, picketing, etc., to prevent the carrying out of the court's order to admit Negroes to the school.[60] On February 25, 1957, the order was amended to issue in the name of the United States.[61]

The White Citizen's Council candidates for Mayor and Town Council of Clinton were defeated overwhelmingly in the town election.[62]

On February 14, a suitcase full of dynamite exploded in the heart of the Negro section, injuring 2 persons.[63]

The first year of desegregation in Clinton High School ended quietly on May 17, 1957, with the graduation of the school's first Negro.

Clinton remained relatively peaceful until October 5, 1958, when, to quote from Board Member Crossno's testimony, "In the pre-dawn darkness, . . . some form of human flesh set off three blasts which

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[58] S.S.N., Sept. 1956, pp. 3, 12.
[59] 2 *Race Rel. L. Rep.* 27 (1957).
[60] McSwain v. Bd. of Education, Civ. No. 1555, E.D. Tenn., Dec. 5, 1956, 2 *Race Rel. L. Rep.* 26 (1957).
[61] U.S. v. Bullock, Civ. No. 1555, E.D. Tenn., Feb. 25, 1957, 2 *Race Rel. L. Rep.* 317 (1957).
[62] S.S.N., Jan. 1957, p. 7.
[63] S.S.N., March 1957, p. 7.

demolished a goodly portion of the Clinton High School Building . . . I do not have the words at my command to adequately describe the reaction of our people to this bombing. The words stunned, shocked, amazed, and hysterical, are some that could be used."[64]

Use of a substitute building was secured 12 miles away at Oak Ridge, and a delegation flew to Nashville to discuss the plight of Clinton with the Governor of Tennessee. The Governor assured his full support.[65]

The Federal Bureau of Investigation agreed to enter the case to aid the local officials. A Clinton delegation travelled to Washington and submitted their problem to two Presidential Assistants. Because the bombing had resulted from the efforts of school authorities to obey the Supreme Court decision, and because Anderson County was financially unable to rebuild the school, they sought financial aid.[66]

As Mr. Crossno later put it, the people of Anderson County did not ask a reward for obeying the law, which was not only an obligation but a privilege; they were simply determined to keep the school operating under the law and needed financial help. Mr. Crossno favored legislation to make the bombing of a school a Federal offense.[67]

Mr. Crossno went on to point out that in his judgment by far the most important and needed item in this period of transition is time. It was his hope that with time the Federal Government and responsible community groups will bring order, consistency, and leadership to the desegregation process and help create an atmosphere in which the majority of people can and will work together.[68]

In his written statement to the Commission Mr. Crossno referred to an article written by a Clinton High School teacher on the effect of the Clinton experiences on the school children:

> These experiences move me to plead with southern white and Negro leaders not to stop integration, for that would be to go backward, but to advance integration by planning wisely and proceeding ever so cautiously. . . .
>
> Our purpose must be what it has always been: the affirmative task of securing for every child a democratic heritage, which includes, among other precious things, a free public education in an atmosphere conducive to wholesome learning.
>
> We can do it if we work and plan together. I have faith that we will.[69]

School year 1957–58

After long controversy, Nashville put a desegregation plan into effect on September 9, 1957. Litigation continued, but the plan was

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[64] Nashville Conference, 129–30.
[65] *Id.* at 130.
[66] *Ibid.*
[67] *Id.* at 132.
[68] *Id.* at 131–132.
[69] Margaret Anderson, "Clinton, Tennessee: Children in a Crucible". *New York Times Magazine,* Nov. 2, 1958, pp. 12, 55.

upheld in 1959 by the United States Circuit Court of Appeals for the Sixth Circuit. The Nashville plan begins in the first grade, and proceeds to desegregate one additional grade per year. A pupil may apply for transfer if, under redistricting, he finds himself assigned to a school that previously served the other race, or to a school or class in which members of the other race predominate.[70]

Nineteen Negro first-graders enrolled in five previously all-white schools on opening day. Disorder, violence, picketing, threats, and intimidation immediately followed. On the night of the second day, a dynamite blast ripped one of the desegregated schools.[71]

Mr. W. H. Oliver, the present Nashville Superintendent, vividly described the Nashville experience at the Commission's Nashville Conference:

> And if we could forget or ignore these personal things, the pictures remaining in our minds of frightened, terrified children; of disturbed, perplexed parents; of angry, menacing, yelling crowds of misled people; of congested traffic; of glaring headlines in the nation's newspapers; of almost empty classrooms; of a beautiful modern school building blasted by dynamite . . . these and many other things remind us that the initiation of desegregation in the Nashville schools was not a simple matter. Furthermore, we know that the job is not done. We have only a little more than begun it.[72]

In sharp contrast to the opening of school in the year 1957–58, 34 Negro first- and second-graders entered formerly all-white schools the following September without incident.[73]

In looking back on the experience, Mr. Oliver stated:

> No one can deny that some of the by-products of forced desegregation have been such as would please our [international] enemies, for they have caused dissension, violence, hatred and confusion among us. It is equally obvious, however, that the influence of good, sane, level-headed, law-abiding citizens of both races has been strong enough to hold our people and our community together.[74]

Mr. Oliver highly praised the Mayor and the Police Department for their part in supporting the school administration to the fullest in the difficulties encountered in establishing desegregation in the schools.[75]

In closing his formal presentation, Mr. Oliver said that he would advocate no changes in the Nashville plan if he had to do the job over, for he felt it was the best that could be devised for Nashville.[76]

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[70] Kelley v. Board of Education, Civ. Nos. 13,748, 13,749 (6th Cir. June 17, 1959).
[71] S.S.N., Oct. 1957. p. 6.
[72] Nashville Conference, p. 86.
[73] S.S.N., Oct. 1958, p. 10.
[74] Nashville Conference, p. 87.
[75] *Id.* at 90.
[76] *Id.* at 91.

School year 1958–59

There were no new instances of desegregation in Tennessee in this school year. However, the peaceful opening of the State's few desegregated schools was a welcome relief from the violence and disorders that accompanied such school openings in the two preceding years.

NORTH CAROLINA

School year 1954–55

Governor William B. Umstead on May 18, 1954, stated that he was "terribly disappointed" by the decision in the *School Segregation Cases*, but he later asserted: "This is no time for rash statements or the proposal of impossible schemes." The Governor immediately asked the Institute of Government at the University of North Carolina to study the implications of the decision.[77]

In the absence of an implementation decree from the United States Supreme Court, the State Board of Education voted to continue segregation in the public schools in the school year 1954–55.[78]

On August 4, 1954, the Governor turned over the report of the Institute of Government[79] to a 19-member biracial advisory committee, known as the Pearsall Committee, which he had appointed to deal with the problem of finding a policy and a program that would "preserve the State public school system by having the support of the people."[80]

No school desegregation occurred in North Carolina the first school year after the *Brown* decision.

Segregation, required by State law, was almost universal throughout North Carolina. Local ordinances and custom completed the pattern in areas of life not specifically covered by statute. However, the State was known generally as being more liberal and progressive than most of her Deep South neighbors. Race relations were considered relatively good, and the exercise of the franchise by the Negro was an important factor in political affairs in many sections. In 1951, the University of North Carolina had admitted Negroes to its graduate school as the result of litigation.[81]

The most concentrated Negro population in North Carolina is in the northeastern portion of the State along the Virginia border. The Negro population is also relatively large in the central counties, ranging between 20 and 30 percent. The average in the mountain counties of the west is about 5 percent.

There are a total of 172 school districts in North Carolina, all biracial. Of these, 100 are county administrative units, and 72 are city administrative units.[82]

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[77] S.S.N., Sept. 1954, p. 10.

[78] *Ibid.*

[79] University of North Carolina Institute of Government, *Law and Government, a Series: The School Segregation Decision* (A Report to the Governor of North Carolina . . .), Univ. of N.C., 1954.

[80] S.S.N., Sept. 1954, p. 10.

[81] McKissick v. Carmichael, 187 F. 2d 949 (4th Cir. 1951).

[82] S.S.N., Sept. 1954, p. 10.

School year 1955–56

Although locally there were at least two attempts to register Negro children in formerly all-white schools in North Carolina, there were no instances of their actual enrollment.[83] In an August 1955 radio and television broadcast, Governor Luther H. Hodges asked the races to attend separate schools voluntarily in order to insure the continuance of the public school system in the State.[84]

The University of North Carolina became the first "white" public college in the South to enroll Negro students in its undergraduate school. This was the result of a court order that required the university to process applications without regard to race or color.[85]

The North Carolina General Assembly in March, 1955, and July, 1956, revised the State's school laws to eliminate mention of race and to vest all transfer authority in the local school districts.[86]

School year 1956–57

This was another year without an instance of desegregation at the public school level.

The most important event, on September 8, 1956, was the overwhelming popular vote in favor of the "Pearsall Committee Plan" for amending the State constitution to authorize tuition grants for children who object to attending desegregated schools, and to permit localities to close public schools.[87]

School year 1957–58

This was a significant year for desegregation activity in the State. In three principal cities, Negroes were admitted to formerly all-white schools.

To prepare for desegregation, school officials from Greensboro, Charlotte, and Winston-Salem met jointly three times. With existing legislation offering no hinderance, these three communities decided to move individually toward desegregation. They acted simultaneously and similarly, but independently.[88]

In Charlotte, some 40 Negroes applied for transfer to all-white schools. The School Board granted 5 and rejected 35, emphasizing that it had decided on the merits of each application in accordance with State law.

Winston-Salem received six applications for transfer. Two were withdrawn, three were denied, and one was granted.

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[83] S.S.N., Oct. 1955, p. 16.

[84] S.S.N., Sept. 1955, p. 14.

[85] Frasier v. Board of Trustees, 134 F. Supp. 589 (M.D.N.C. 1955), *aff'd*, 350 U.S. 979 (1956).

[86] Act of March 30, 1955, N.C. Laws 1955, ch. 366, p. 309 as amended by Act of July 27, 1956, N.C. Ex. Sess. 1956, ch. 7, p. 14.

[87] Act of July 27, 1956, N.C. Ex. Sess. 1956, ch. 1, p. 1.

[88] Nashville Conference, pp. 104–05.

Greensboro received nine applications, of which six were approved. One was denied, one withdrawn, and one transferred elsewhere.[89] The Greensboro Board used the rule, "If the child were white and similarly qualified, where would he go?" [90] In implementing this rule, the school district lines were not considered, but rather the distance from the child's home to the nearest school. This was on July 23, 1957.

"In August," Ben L. Smith, Superintendent of Schools Emeritus of Greensboro, told the Nashville Conference, "an injunction was sought to prevent the Board from enrolling Negro pupils." However, the Board's action was sustained, first by the Superior Court of North Carolina, and on appeal, by the Supreme Court of the State.[91]

Mr. Smith related that there was very little difficulty actually connected with the opening of schools. "As was expected and as will always happen, the Superintendent of Schools, the Principal of the school . . . , and the Board of Education . . . [bore] the impact of the opposition . . . We . . . [also had] Kasper visit the community. . . . [He] organized a group which later apparently turned into a Ku Klux Klan group." [92] Groups were free to express dissent, but police officers in plain clothes attended such gatherings.

At the end of Greensboro's first year of desegregation, the Associated Press summarized the experiences of the Negro students as follows:

> Mostly disregarded, occasionally welcomed, insulted by a few, they finished in a calm that contrasted sharply with the storm aroused by their entry last year.[93]

In explaining the changes that had been brought about in the school system of Greensboro and in its community attitudes to make desegregation possible in that city, Superintendent Smith gave credit to the city's enlightened and liberal-minded atmosphere, its extraordinary School Board and attorney, its resolute school personnel, its favorable press, its intelligent, alert and courageous police force, headed by a chief who believed in law and order, its long history of devotion to public education, and its excellent record of race relations.[94]

> Negro citizens had for some time served on the police force. A prominent Negro educator, Dr. David P. Johns, had for several years served as a member of the Board of Education and upon final illness had been succeeded by a prominent Negro physician. This Negro physician had formerly been elected a member of the City Council, and he had led the ticket in the election in which he was offered as a candidate. It is said that if all of the pre-

[89] S.S.N., Aug. 1957, p. 3.

[90] Herbert Wey and John Corey, *Action Patterns in School Desegregation,* Bloomington, Ind., 1959, p. 124.

[91] Nashville Conference, p. 105; *in re* Applications for Reassignment, 101 S.E. 2d 359 (N.C. 1958).

[92] *Id.* at 107, 108.

[93] S.S.N., July 1958, p. 13.

[94] Nashville Conference, pp. 105, 106.

dominantly Negro ballot boxes had been thrown out, he still would have been elected by a majority of the citizens of Greensboro.[95]

When polio struck the community, Superintendent Smith reported, all who had been stricken were accepted into the hospital, and a school was set up there for all invalided pupils regardless of race. A recently established Cerebral Palsy School was being administered on a non-segregated basis. The Woman's College of the University of North Carolina had accepted some Negro students, and the Agricultural and Technical College of North Carolina, a Negro institution, has offered some courses to white students. The Catholic parochial school had admitted Negro pupils. The city was influenced by the liberal views of the Friends and by members of the Jewish community, which includes many of Greensboro's prominent business men and civic leaders.[96]

"While a minority opposed vigorously the action of the Board of Education," said Superintendent Smith, "and many regretted the necessity, the majority felt that it was the best course that could be taken. Most felt that it was the least for the longest . . ." [97]

As to how fast further desegregation might occur, Superintendent Smith remarked:

> The School Board has taken the position that pupils should not be forced against their will into an inhospitable situation . . [It has] . . accepted only pupils who have made application . . . I would hope that there would be a gradual changeover . . . I certainly should not like to see Negro pupils forced against their will, the will of their parents, into a situation that might prove to be inhospitable for them. I think the fact that we have made a beginning and did it voluntarily . . . has been pleasing, greatly pleasing, to the Negro population, and there has been definite appreciation, and their leaders have said to us from time to time that they are not so much concerned about where we are now, but the direction in which we are going.[98]

Negro parents whose children were excluded from Gillespie Park School in Greensboro in 1958–59 filed suit in the Federal District Court.[99]

School year 1958–59

Schools opened with Negro pupils attending schools with whites only in the three cities that had desegregated the preceding year.

In actual numbers, only eleven Negroes were in white schools in these cities, one more than had finished the year before. In Winston-Salem, where desegregation extended to an additional school, more than two hundred white pupils

[95] *Id.* at 106.
[96] *Ibid.*
[97] *Ibid.*
[98] *Id.* at 109, 110, 111.
[99] *Id.* at 111, 112.

asked for transfers. Protest meetings, harassment, picketing, and general unpleasantness accompanied the opening of schools to some extent in all the cities.[1]

Late in the school year, the first instance of desegregation in the eastern part of the State occurred when the son of a Negro Air Force Sergeant was enrolled in a white elementary school in Wayne County, adjacent to the Seymour Johnson Air Force Base. The county designated the school to be for children of air base personnel only, beginning in September, 1959, a decision expected to result in considerable desegregation.[2]

VIRGINIA

School year 1954–55

Immediately after the 1954 Supreme Court decision Governor Thomas B. Stanley expressed confidence that the people of Virginia would receive the ruling "calmly" and would "take time to carefully and dispassionately consider the situation before coming to conclusions on steps which should be taken." [3] On June 11, 1954, Attorney General J. Lindsay Almond, Jr., declared: "Negro teachers are not going to be engaged in Virginia to teach white children. No child of any race is going to be compelled to attend a mixed school." [4]

Dowell J. Howard, the State Superintendent of Public Instruction, said: "There will be no defiance of the Supreme Court decision as far as I am concerned. We are trying to teach school children the law of the land, and we will abide by it." [5] But before the year was out, at least 52 of the governing bodies of Virginia's 98 counties were on record against school desegregation.[6]

The largest concentration of Negro population is in the southeastern agricultural section of the State, known as "southside" Virginia. The populations of these counties are generally 50 percent or more Negro. The western mountain counties, on the other hand, average only about 5 percent Negro population.

The school system in 1954 consisted of 98 county and 29 city school divisions or districts. With the possible exception of one or two districts, all were presumed to have Negro school children residing within their boundaries.[7]

Racial segregation was the way of life in the State, either by State law or by custom and practice. At the time of the *Brown* decision, few inroads had been made in this pattern. As the result of court actions some desegregation had occurred in public transportation facilities, and Negroes had gained admission to the graduate schools of a few formerly all-white public institutions of higher education.[8]

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[1] S.S.N., Oct. 1958, p. 12.
[2] S.S.N., April 1959, p. 4.
[3] S.S.N., Sept. 1954, p. 13.
[4] *Ibid.*
[5] *Ibid.*
[6] S.S.N., Dec. 1954, p. 15.
[7] S.S.N., Sept. 1954, p. 3.
[8] See J. Rupert Picott, "Desegregation of Public Education in Virginia," 24 *J. Negro Ed.* 361, 363 (1955).

Shortly after the *Brown* decision, Governor Stanley appointed a 32-man legislative committee to study the problem raised and to prepare a report with recommendations.[9]

Desegregation of Virginia's Catholic parochial schools, which began in September, 1954, was reported to be working out "magnificently" with 39 Negro pupils in ten schools.[10]

School year 1955–56

Resistance to school desegregation stiffened, and statements of public officials became more critical of the Supreme Court decision. At the annual convention of the Virginia State Bar Association, Attorney General Almond and others criticized the high Court, and the Association adopted a resolution by a vote of 75 to 54 deploring "the present tendency of the United States Supreme Court . . . to invade by judicial decision the constitutionally reserved powers of the States of the Union.[11] Upon recommendation of Governor Stanley, the Virginia General Assembly passed resolutions "interposing the sovereignty of Virginia against encroachment upon the reserved powers of this State." [12]

Also at this session of the legislature, after the electorate of the State had voted two to one in favor of a constitutional convention to make possible a tuition grant plan, section 141 of the Virginia constitution was amended to allow State funds to be expended for education in private non-sectarian schools.

School year 1956–57

The local option features of the recommendations of the legislative committee (the Gray Commission) for dealing with problems posed by the *Brown* decision were scrapped when the legislature, meeting in special session, approved the legislative proposals introduced by Governor Stanley and strongly endorsed by United States Senator Harry F. Byrd. These embodied the concept of "massive resistance." [13]

School year 1957–58

No public school desegregation occurred in Virginia in this school year, but developments in a number of desegregation cases moved the State closer to the prospect.

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[9] S.S.N., Sept. 1954, p. 15.
[10] S.S.N., Oct. 1954, p. 14.
[11] S.S.N., Sept. 1955, p. 12.
[12] Act of Feb. 1, 1956, Va. Acts 1956, p. 1213.
[13] S.S.N., Oct. 1956, p. 16; See Chapter V in the Education Section of this Report for details and the subsequent history of this legislation.

A poll by the *Richmond Times Dispatch*, the State's largest newspaper, indicated that two out of three white adult Virginians preferred the closure of public schools to desegregation.[14]

School year 1958–59

As school desegregation orders ran the full course of judicial appeal, J. Lindsay Almond, Jr., now Governor, in September 1958 invoked the State's school closing law to withdraw nine public schools from local authority and operation. The schools successively closed were Warren County's only high school, Charlottesville's only white high school and one of its elementary schools, and all six of Norfolk's white high and junior high schools.[15]

On January 19, 1959, the State laws under which the Governor's power was invoked were held to violate both the Federal and State Constitutions.[16] The desegregation orders applicable to the three communities were thereupon made effective for the school term beginning in February, 1959.[17] Similar orders were made effective for the opening of the second school term in Arlington and Alexandria. Charlottesville was the only one of the five communities to be granted a stay of the district court's desegregation order.[18]

In February, 1959, fifty-three Negro pupils were admitted to eleven formerly all-white schools in four Virginia communities. However, twenty-one of the Negro pupils were attending the Warren County High School without the presence of white students. The 1044 white pupils who had been enrolled in the high school prior to the school closing chose to finish the year in the private school that had been established, or in other public schools they had been attending.[19]

An analysis of enrollment figures revealed that in Norfolk 17 Negro pupils were scattered among 7200 white pupils. Four Negro pupils were attending a junior high school with 1075 white pupils in Arlington, and nine Negro pupils were among 2300 white pupils in three schools in Alexandria.[20]

The admission of Negro pupils to white schools in Virginia was a significant event, but perhaps more noteworthy is the fact that in all three communities the occasion was unmarred by mobs, violence, or the abuse of Negro pupils. It had been made clear that no violence would be tolerated. All were large communities with adequate law enforcement agencies, and the entire school term passed without significant incident.

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[14] S.S.N., Dec. 1957, pp. 10, 11.
[15] S.S.N., Oct. 1958, pp. 3, 4.
[16] James v. Almond, 170 F. Supp. 331 (E. D. Va. 1959); Harrison v. Day, 106 S.E. 2d 636 (Va. 1959).
[17] S.S.N., Feb. 1959, p. 4.
[18] Allen v. School Board, 263 F. 2d 295 (8th Cir. 1959).
[19] S.S.N., March 1959, p. 14.
[20] *Ibid.*

CHART XIV (See also Table 18.)

PROGRESS TOWARD DESEGREGATION BY SCHOOL DISTRICTS 1954–1959

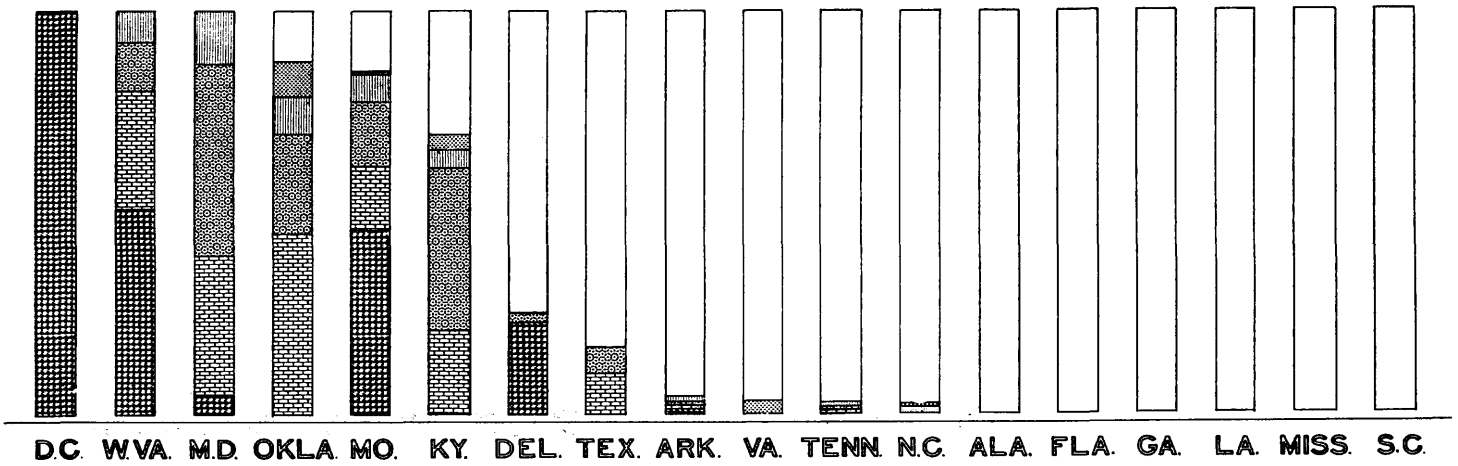
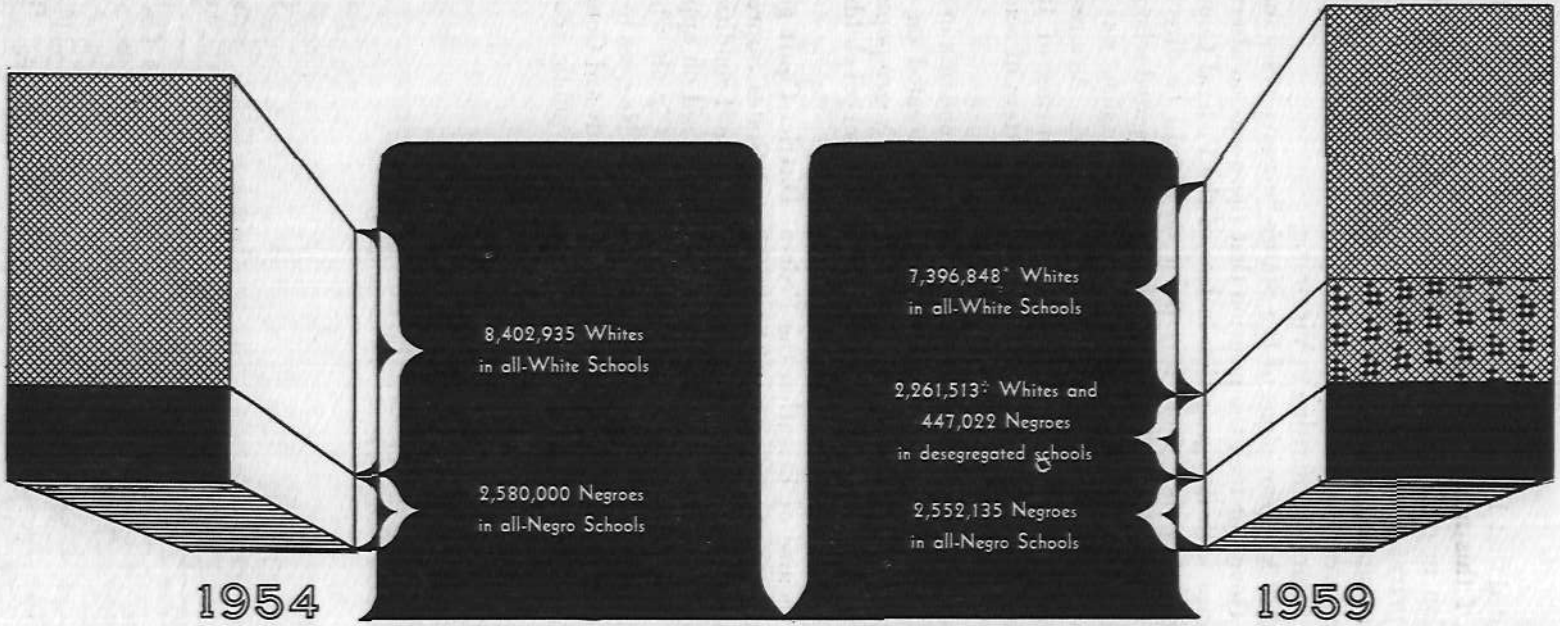


CHART XV. Number of Pupils Affected by Desegregation in the 17 Southern and Border States and the District of Columbia



Data from *Southern Education Reporting Service, May 15, 1959.*

The 447,022 Negro pupils in school systems that desegregated between 1954 and 1959 represent 15 percent of the total Negro enrollment, as shown here. However, approximately half of them, either because of residential segregation or for other reasons, are still in all-Negro schools. See Table 19 and adjacent text.

*An unknown number of white pupils in Missouri are in desegregated schools but have been included in the top panel because of insufficient data.

†This division is actually larger than shown, because an unknown percentage of Missouri's white pupils are in desegregated schools.

It was estimated that 12,729 pupils were affected by school closings in Virginia. Of this number, 3,015 were presumed not to have received instruction in other public schools, both within and without the State, or in private schools.[21]

In all of the communities affected by school closings, private segregated schools were established. It remains to be seen what role they will play in the future of education in Virginia.

With the fall of key provisions of the State's "massive resistance" legislation, the Governor took the position that there was no alternative to compliance with desegregation orders of the Federal Courts, and that the State's policy from this point on should be directed towards seeing that no child is *forced* to attend a desegregated school.[22]

A new legislative study group, the Perrow Commission, was established to develop proposals for a new course of action. As a result of its work, the Virginia General Assembly in the spring of 1959 adopted new legislation to permit local option in matters of school desegregation.[23]

Prince Edward County, Virginia, was one of the defendants in the *School Segregation Cases* in 1954. In this county, located on the fringe of the "southside" section of the State where the Negro population is most concentrated, there are more Negro public school children than white.[24]

After a long course of litigation the Federal District Court gave the county until 1965 to comply with the United States Supreme Court mandate, but that date was left subject to change if conditions warranted.[25] On May 5, 1959, this decision was reversed on appeal by the United States Court of Appeals for the 4th Circuit which directed that the county be ordered to admit qualified Negroes to its schools in September, 1959.[26] Since that time Prince Edward County has taken numerous steps toward abolition of its public school system.

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[21] S.S.N., Jan. 1959, p. 9.
[22] S.S.N., March 1959, p. 14.
[23] S.S.N., May 1959, p. 2.
[24] S.S.N., June 1959, p. 6.
[25] Allen v. County School Board, 164 F. Supp. 786 (E.D. Va. 1958).
[26] Allen v. County School Board, 266 F. 2d 507 (4th Cir. 1959).

CHAPTER V. LEGAL DEVELOPMENTS OF RESISTANCE IN THE SOUTHERN STATES

I. JURIDICAL BASIS FOR NON-COMPLIANCE

The *Brown* decision shattered previous court precepts but not the South's belief in segregation. Belief begat the will to resist.

The legal justification of resistance took many forms. The doctrine of "interposition" was invoked, as noted later. Impeachment of members of the United States Supreme Court was recommended, on grounds of alleged usurpation of constitutional powers. The validity of the Fourteenth Amendment, the very heart of the *School Segregation Cases opinion*, was questioned. The attitude was adamant and the arguments ingenious.

(1) Exceptions

While other Southern States were busily laying a theoretical foundation to justify non-compliance, Texas and North Carolina enacted no interposition resolutions and called for no impeachment of Supreme Court justices. Neither did they argue that the Fourteenth Amendment was invalid.

The Texas State Board of Education issued a statement of policy on July 4, 1955, leaving the matter of desegregation within the discretion of local school officials.[1]

The North Carolina Advisory Committee on Education, appointed pursuant to a resolution of the North Carolina Legislature, issued its report on April 5, 1956, declaring that "the decision of the Supreme Court of the United States, however much we dislike it, is the declared law and is binding upon us." [2]

(2) Interposition

The doctrine of interposition as invoked by the Southern States in this instance asserts the right of any state to interpose its sovereignty to prevent or arrest contested action by the Federal government within its borders. This is a theory of American Constitutional law which has often been advanced but never authoritatively validated.

Alabama, Arkansas, Georgia, South Carolina, Mississippi, Tennessee, Virginia, Louisiana, and Florida enacted interposition resolutions in 1956 and 1957.[3] The resolutions varied somewhat in form, but

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[1] 1 *Race Rel. L. Rep.* 261 (1956).

[2] N.C. Laws 1955, p. 1692, Res. 29.

North Caroline Advisory Committee on Education, Report to the Governor, General Assembly, State Board of Education, and County and Local School Boards, April 5, 1956, 1 *Race Rel. L. Rep.* 581 (1956).

[3] Ala. Laws 1st Ex. Sess. 1956, p. 70, No. 42; Ark. Laws 1956, Proposed Constitutional Amendment No. 47, 1 *Race Rel. L. Rep.* 1117 (1956) (approved and enacted in general

all agreed in classifying the *School Segregation Cases* decision as an invasion by the Supreme Court of the process of amending the United States Constitution. All called for action by other states to stop the Supreme Court's encroachment upon the reserved powers of the states. All announced, furthermore, the intention to avoid this "illegal" encroachment.

(3) Other juridical attacks justifying non-compliance

The Senate of Georgia attacked the validity of the Fourteenth and Fifteenth Amendments and petitioned Congress to declare them invalid because Southern Senators and Representatives had been excluded from the 39th, 40th and 41st United States Congresses.[4]

The lower house of the Georgia legislature passed a resolution calling upon the State's Representatives in Congress to introduce a resolution of impeachment against the Chief Justice and five of the Associate Justices of the United States Supreme Court. Fifteen charges of usurpation of power were made, citing 15 United States Supreme Court decisions, including those in the *School Segregation Cases*.[5]

The State of Florida proposed an amendment to the United States Constitution giving the United States Senate appellate jurisdiction over decisions of the Supreme Court where the powers of a State were involved or where a State was a party or otherwise interested in a case.[6] Florida further proposed that the Tenth Amendment of the United States Constitution be amended to state that the maintenance of "harmonious race relations" be included within the police powers reserved to the States, together with powers to regulate education within their borders.[7]

In spite of the onslaught of Federal power, these Southern States moved on from constitutional theory to the practical task of maintaining segregation by various legislative means.

II. FOUNDATIONS FOR EVASION OF COMPLIANCE

(1) Planning legislation

The desire to resist desegregation caused certain States to call into being various commissions and committees to study ways and means.[7a]

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election November 6, 1956); Ga. Laws 1956, p. 642, No. 130; S.C. Acts 1956, p. 2172, No. 914; Miss. Laws 1956, ch. 466, p. 741; Tenn. Acts 1957, H.R., Jan. 17 & Jan. 22, 1957, 2 *Race Rel. L. Rep.* 228 & 481 (1957); S. Res. 3; Tenn. Acts 1957, p. 1573; Va. Acts 1956, p. 1213; H. Con. Res. 10; La. Laws 1956, 1 *Race Rel L. Rep.* 753 (1956); Fla. Laws 2d Ex. Sess. 1956, p. 401; Fla. Laws 1957, p. 1217.

[4] Ga. Laws 1957, p. 348, No. 45.

[5] Ga. Laws 1957, p. 553, No. 100.

[6] Fla. Laws 1957, p. 1191.

[7] See *Hearings on Pending Civil Rights Bills Before a Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary,* 86th Cong., 1st Sess., 1959, pp. 89–105 (Compilation of Recent State and Local Laws, Resolutions, Ordinances, and Administrative Policies, with Comments by Mr. J. Francis Polhaus, Counsel, Washington Bureau, National Association for the Advancement of Colored People). Fla. Laws 1957, p. 1252.

[7a] These bodies adopted a variety of names.

South Carolina had early provided for the Gressette Committee, which published a series of reports recommending many items of school segregation legislation.[8]

A Georgia Commission on Education was created in 1953,[9] and its powers to prepare legislation were extended in 1957.[10]

A Florida Special Advisory Committee, appointed by the Governor to recommend legislative action, rendered its report on July 16, 1956.[11]

Mississippi in 1956 and Arkansas in 1957 created State "Sovereignty Commissions" to resist Federal usurpation of the rights and powers reserved to the States.[12]

Louisiana created a Joint Legislative Committee in 1954 [13] and in 1956 extended its life for the purpose of "carrying on and conducting the fight to maintain segregation of the races" in the State,[14] by compiling data and drafting legislation.

The first flurry of legislative activity in Alabama resulted in such a mass of overlapping and conflicting bills that a Legislative Coordinating Committee was created in the 1957 Legislature.[15]

In Texas, on July 27, 1955, the Governor appointed a Texas Advisory Committee to examine the following three major problems:

1. The prevention of forced integration.
2. The achievement of maximum decentralization of school authority.
3. Ways in which the State Government may best assist local school districts in solving their problems.

The Legal and Legislative Subcommittee of this group rendered its report and recommendations on September 24, 1956.[16]

A North Carolina Advisory Committee on Education was created in 1955,[17] and issued its report on April 5, 1956.[18] Less than three months later, on June 19, 1956, the Governor issued a proclamation calling for an extraordinary session of the legislature to consider measures recommended by the Committee.[19]

The Governor of Arkansas appointed a Special Committee to make recommendations for official action with respect to racial integration

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[8] S.C. Laws 1956, Act 927 (formerly S. Con. Res. S-371 of 1951); Interim Report No. 1, July 28, 1954; Interim Report No. 2, Jan. 11, 1955; Interim Report No. 3, Dec. 14, 1955; Interim Report No. 4, Jan. 31, 1956; Interim Report No. 5, Feb. 28, 1958, see generally 3 *Race Rel. L. Rep.* 338–340 (1958).

[9] Ga. Laws 1953, p. 64.

[10] Ga. Laws 1957, p. 56.

[11] Florida Special Advisory Committee, Report to the Governor, July 16, 1956; 1 *Race Rel. L. Rep.* 921 (1956).

[12] Miss. Gen. Laws 1956, ch. 365, p. 520; Ark. Laws 1957, p. 271, No. 83.

[13] La. Acts 1954, H.R. Con. Res. 27.

[14] La. Acts 1956, H.R. Con. Res. 29; 1 *Race Rel. L. Rep.* 755 (1956).

[15] Ala. Laws 1957, p. 170, No. 119.

[16] Report of the Legal and Legislative Subcommittee of the Texas Advisory Committee on Segregation in the Public Schools, Sept. 24, 1956, 1 *Race Rel. L. Rep.* 1077 (1956).

[17] and [18] Op cit. *supra* note 8.

[19] 1 *Race Rel. L. Rep.* 728 (1956).

in the public schools. The Committee made its report on April 24, 1956.[20]

On August 30, 1954, the Governor of Virginia appointed a Commission on Public Education, popularly known as the "Gray Commission," which reported on November 11, 1955.[21]

As may be seen by the initial dates of some of these committees or commissions, there had been apprehension in parts of the Deep South for some time prior to the rendition of the opinions in the *School Segregation Cases*, and legislative thought had been given to possible methods of evasion. Indeed, Mississippi as early as 1952 created a Legislative Recess Study Committee for the purpose of studying its existing school laws, school programs, and school policies.[22] The intent was to make recommendations for the continued segregation of the races in the public schools. This included consideration of equalization of school facilities and provision for salary schedules for teachers, in a hurried attempt to make the Negro schools equal while separate.

(*2*) *Justifying segregation as an exercise of police power*

Louisiana in 1954 amended Article XII, Section 1, of its Constitution [23] to specify that the provision for separate public schools was not, as originally stated, on a basis of race but rather in the exercise of state police power to promote and protect the public health, morals, better education, and the peace and good order of the State. This amendment also ordered the legislature to provide for a public education system for the State. Subsequent legislation directed the State Board of Education not to approve any public school violating this principle of separation.[24]

The efficacy of Louisiana's constitutional amendment and implementing legislation was short lived. In 1957, the Fifth Circuit Court of Appeals ruled that the Louisiana Constitution and statutory provisions were not a proper exercise of state police powers, because it would be unconstitutional to use such powers as a means of depriving any person of his rights as defined in the *School Segregation Cases*.[25] The United States Supreme Court declined to review this action.[26]

(*3*) *Withdrawal of State's consent to be sued*

On the premise that a state cannot be sued without its consent, under the Eleventh Amendment to the United States Constitution, the state legislature of Louisiana sought to forestall suits for the admission of Negroes into white schools. In 1956, by an amendment to the State

[20] *Id.* at 717.
[21] *Id.* at 241.
[22] Miss. Laws 1952, ch. 453, p. 737.
[23] La. Acts 1954, p. 1338, No. 752.
[24] La. Acts 1954, p. 1034, No. 555.
[25] Orleans v. Bush, 242 F. 2d 156 (5th Cir. 1957).
[26] 354 U.S. 921 (1957).

Constitution adopted in November, the State withdrew its consent to suits against certain state agencies, including those concerned with recreation and education.[27]

The legal theory behind this contention was shattered in 1957 [28] by a decision of the United States Court of Appeals, which held that desegregation cases brought in a federal court against a local school board are not suits against the State to compel State action. Rather, such cases seek to prevent State officials from acting in a manner which the plaintiffs consider to be in violation of their rights under the Federal Constitution. The Court further stated that if, in fact, the laws under which the local board is purporting to act are invalid, then the board is acting without authority from the State and the State is hence not involved. The Court held that the laws under which the local board purported to act in implementing segregation *were* invalid.

(4) *Closing the schools before imminent desegregation*

In order to legalize the closing of any public schools that might be integrated or desegregated, the compulsory school attendance laws of the several states required changes.

South Carolina [29] and Mississippi [30] repealed their compulsory school attendance laws in 1954 and 1956, respectively. Louisiana, through amendment, permitted suspension of its attendance law if either a public school or a private day school should be ordered to desegregate.[31]

Alabama, on the other hand, did not repeal or suspend the compulsory attendance law but gave each child, through its parent, legal guardian, or custodian, the right to choose whether or not to attend a school provided for members of its own race.[32] Georgia in 1957 granted the Governor the right to suspend the compulsory school attendance law whenever in his opinion it was necessary because of riot, insurrection, public disorder, disturbance of the peace, natural calamity, or disaster.[33]

Florida, Virginia, and Texas provided for the closure of their public schools whenever military forces were employed under federal authority in the vicinity of a school.[34] Florida further provided for local boards of public instruction to take action in transferring pupils in the event of such a closure.[35] The clear implication of this act was that compulsory school attendance laws would be suspended if it were not feasible or possible to transfer pupils when their school was closed.

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[27] La. Added Acts 1956, p. 1159, No. 613.

[28] See note 25 *supra*. *Accord,* School Board of City of Charlottesville v. Allen, 240 F. 2d 59 (4th Cir. 1957).

[29] S.C. Laws 1954, p. 1695.

[30] Miss. Laws 1956, ch. 288, p. 366.

[31] La. Laws 1956, p. 68, No. 28.

[32] Ala. Laws 1956, p. 446, No. 117.

[33] Ga. Acts 1957, p. 168, No. 139.

[34] Va. Acts 1958, ch. 41, p. 26; Tex. 2d Ex. Sess. 1957, ch. 7, p. 161.

[35] Fla. Ex. Sess. 1957, ch. 1975, p. 10.

Arkansas, on the other hand, merely released any student from enrolling in or attending any school wherein both whites and Negro children were enrolled.[36] The prototype of this Arkansas statute may be seen in a similar Virginia law.[37]

The State of Texas released a child from compulsory attendance if his parents should object to his enrollment in a racially mixed school.[38] A similar rule was adopted in North Carolina.[39]

Louisiana stated squarely in its school closing law,[40] that the Governor was authorized to close any racially mixed public school or any public school that was subject to a court order requiring it by a certain date to admit Negroes and whites. This same act authorized any parish and city board to transfer the property of any closed school to private parties for the operation of a private nonsectarian school.

Mississippi authorized its Governor to close public schools or institutions of higher learning when he believed such closure would be in the interest of the State or would promote public peace and tranquility.[41]

Georgia provided in its General Appropriations Act for the fiscal year 1957 [42] that no funds appropriated should be used for any public educational facility in which the white and Negro races were not separated, even if court decrees prohibited such separation. The State further provided [43] that the Governor could close district public schools upon ascertaining that they were not entitled to State funds for maintenance and operation.

South Carolina also used the pocketbook method of closure by providing for a stoppage of State appropriations and State aid for any school from or to which any pupil was transferred by court order. It was further provided that this stoppage should cease only when the pupil involved returned to the school to which he had been assigned prior to the court order.[44]

Virginia enacted legislation in 1956 which provided that if any school should be racially integrated, it would at once come under State control and be closed.[45] Such a school could not be reopened as a public school except by gubernatorial executive order finding that its opening would not affect the peace and tranquility of the community and that the assignment of pupils to that school could be accomplished without compulsory integration contrary to the wishes of any of its pupils or their parents.

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[36] Ark. Acts 1957, p. 280, No. 84.
[37] Va. Ex. Sess. 1956, ch. 59, p. 61.
[38] Tex. Acts 1957, ch. 287, p. 683.
[39] N.C. Ex. Sess. 1956, ch. 5, p. 13.
[40] La. Laws 1958, p. 831, No. 256.
[41] Miss. Laws 1958, ch. 311, p. 527.
[42] Ga. Laws 1957, p. 56.
[43] Ga. Acts 1956, p. 6, No. 11.
[44] S.C. Acts 1955, p. 433, No. 234.
[45] Va. Ex. Sess. 1956, ch. 68, p. 69.

In 1959, a United States District Court dealt a crushing blow to Virginia's "massive resistance" laws.[46] The court stated that so long as the State, directly or indirectly, maintained and operated a school system with public funds, or participated by arrangement or otherwise in the management of such a school system, and so long as the State permitted other public schools to remain open at the expense of the taxpayers, no one public school or grade school could be closed to avoid the effect of the law of the land as interpreted by the Supreme Court.

The Virginia Legislature thereafter, in Special Session in 1959, repealed its "massive resistance" statutes;[47] and provided for compulsory attendance without mention of race;[48] for return of control to local school boards; and for the financial structuring of local boards.[49]

North Carolina enacted legislation empowering the local Board of Education to close any or all schools within its jurisdiction and further providing for an election within the school unit to determine whether the school should be closed.[50]

Texas in 1957 made provision for the closure of a school system by the indirect method of withholding certain funds. The statute required that a local referendum be held to determine whether the dual school system should be abolished. If any school should integrate without holding such a referendum it would become ineligible for accreditation and cut off from State educational funds.[51]

An extraordinary session of the Arkansas legislature in 1958 empowered the Governor to close the schools of any district and within 30 days call upon the voters of the district to determine whether all schools within the district should be integrated.[52]

(*5*) *Public education by private institutions*

Traditionally, neither sectarian nor non-sectarian private schools in the South have received State aid or tuition grants.

In 1958, the Louisiana Legislature[53] authorized "educational cooperatives" to conduct private elementary schools, and to borrow for the purpose. Membership in a cooperative was limited to parents or guardians of children attending its school.

Alabama amended its constitution in 1956, to permit the legislature to authorize whomever it pleased to establish and operate schools.

[46] James v. Almond, 170 F. Supp. 331 (U.S.D.C.—E.D. Va., 19 January 1959).
[47] Va. 1st Spec. Sess. 1959, ch. 2, 4 *Race Rel. L. Rep.* 188 (1959).
[48] Va. 1st Spec. Sess. 1959, ch. 72 C C H 1959 Legis. Serv., Va. 83 (1959).
[49] Va. Acts 1959, ch. 79, C C H Legis. Serv. Va. 57 (1959).
[50] N.C. Ex. Sess. 1956, ch. 4, p. 9.
[51] Tex. Acts 1957, ch. 283, p. 671.
[52] Ark. Ex. Sess. 1958, No. 4, 3 *Race Rel. L. Rep.* 1048 (1958). Upheld in Garrett v. Faubus, Ark. Sup. Ct., April 27, 1959, 27. U.S.L. Week 2582, with the dictum that the power of the Governor to close all public schools permanently would violate the Fourteenth Amendment of the United States Constitution. The Act was held unconstitutional in Aaron v. McKinley. The citation to Aaron v. McKinley may be found in ch. IX.
[53] La. Acts 1958, p. 833, No. 257.

The amendment provided that real or personal property could be leased, sold, or donated to or for the benefit of citizens for educational purposes. It further stated that real property belonging to the state could not be donated for educational purposes except to non-profit, charitable organizations or associations.[54]

The State of Georgia authorized local school boards to lease public school property for private school purposes.[55]

The above statutory enactments providing for the leasing of public property for private school purposes are now under the shadow of the decision handed down on November 10, 1958 by the United States Eighth Circuit Court of Appeals, which enjoined the school officials of Little Rock from transferring possession or control of public schools.[56]

The Little Rock School Board was under direct order of the United States District Court to begin desegregation. But under the Circuit Court decision, any similar transfer of school property might reasonably be considered an impediment to the general duty throughout the United States to desegregate "with all deliberate speed."

Educational grants from public funds, to help students escape desegregation by attending private, non-sectarian schools, were authorized in Virginia, North Carolina, Louisiana, Georgia, Arkansas, and Alabama.[57] At this writing, no state had yet made such grants, and their constitutionality remained doubtful. The Tuition Grant Act of Arkansas has been held unconstitutional because interrelated with the State's unconstitutional school-closing law.[58]

(*6*) *Pupil placement laws*

The essence of pupil placement or assignment laws is in the authority they give to administrative agencies, either local or statewide, to assign, transfer, or continue pupils in schools as a result of weighing a number of specified factors not related to race or color. Between 1955 and 1958, such laws were enacted by Alabama, Louisiana, Florida, Virginia, Texas, North Carolina, Arkansas, and Tennessee.[60]

Factors listed for consideration in the statutes of six of these states (Alabama, Louisiana, Florida, Tennessee, Arkansas and Texas) are as follows:

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[54] Ala. 1st Ex. Sess. 1956, p. 119, No. 82.

[55] Ga. Laws 1956, p. 10, No. 13.

[56] Aaron v. Cooper, 261 F. 2d 97 (1958).

[57] Va. Ex. Sess. 1956, ch. 68, p. 69; N.C. Ex. Sess. 1956, ch. 3, p. 4; La. Acts 1958, No. 258, p. 850; Ga. Laws 1956, p. 6, No. 11; Ark. Ex. Sess. 1958, No. 5, as amended by Act No. 151, Ark. Laws 1959; Ala 1st Ex. Sess. 1956, p. 119, No. 82.

[58] Aaron v. McKinley, (E.D. Ark. June 18, 1959).

[60] Ala. Laws 1955, p. 492, No. 201; La. Laws 1958, p. 856, No. 259; Fla. 2d Ex. Sess. 1956, ch. 31380, p. 30; Va. Ex. Sess. 1956, ch. 70, p. 74 as amended by Act of March 29, 1958, Va. Acts 1958, ch. 500, p. 638; Tex. Acts 1957, ch. 287, p. 683; N.C. Ex. Sess. 1956, ch. 7, p. 14; Tenn. Acts 1957, ch. 13, p. 40. Ark. Stat. Ann. secs. 80–1519 through 80–1524.

In Alabama, Louisiana, Tennessee, Arkansas, and Texas:

1. Availability of transportation facilities.

2. Available room and teaching capacity in the various schools.

3. Adequacy of pupil's academic preparations for admission to a particular school or curriculum.

4. Psychological effect upon the pupil of attendance at a particular school.

5. Possibility of breaches of the peace or ill will or economic retaliation within the community.

6. Possibility of threat of friction or disorder upon pupils or others.

7. Home environment of the pupil.

8. The maintenance or severance of established social and psychological relationships with other pupils and with teachers.

9. Choice and interest of the pupil.

10. The morals, conduct, health and personal standards of the pupil.

11. The request or consent of parents or guardians and the reasons assigned therefor.

In Alabama, Louisiana, Florida, Tennessee, Arkansas, and Texas:

12. Effect of admission of new pupils upon established or proposed academic programs.

13. Scholastic aptitude and relative intelligence or mental energy or ability of the pupils.

14. Psychological qualification of the pupil for the type of teaching and associations involved.

15. Effect of admission of the pupil upon the academic progress of other students in a particular school or facility.

In Alabama, Louisiana, Florida, Arkansas, and Texas:

16. Suitability of established curricula for particular pupils.

In Alabama, Louisiana, Arkansas, and Texas:

17. Effect of admission upon prevailing academic standards in the particular school.

Assignment to any or all schools on the basis of the pupil's sex was authorized in the statutes of Alabama, Louisiana, Texas and Tennessee.

The Tennessee and Arkansas Pupil Placement Acts contained several additional factors.

The Alabama 1955 Pupil Placement Law, which contained all of the factors enumerated above, was held by the United States District Court for the Northern District of Alabama to be not unconstitutional on its face. The court presumed that the law would be administered without regard to race or color but recognized the possibility that in some future proceeding it might be declared unconstitutional in its application.[61] The Supreme Court of the United States, upon appeal,

[61] Shuttlesworth v. Birmingham Bd. of Education, 162 F. Supp. 372 (N.D. Ala. 1958).

affirmed the judgment of the District Court,[62] solely on the narrow point stated.

The original Virginia Pupil Placement Law, enacted in the 1956 Extra Session of the Legislature,[63] listed only eight factors that could be considered in pupil placement. One of these, however, included any matters that might affect the "efficient" operation of the schools. And the same legislature, in its Appropriations Act,[64] defined an "efficient system of public schools" as one in which no school taught white and colored children in the same student body. The Federal District Court, in looking at the Pupil Placement Law, took judicial notice of this definition and found the two items of legislation interrelated. The Court therefore declared the Pupil Placement Act unconstitutional on its face.[65] An amendment to the Virginia Act in 1958 merely ordered placement "so as to provide for the orderly administration of such public schools, the competent instruction of the pupils enrolled and the health, safety, and general welfare of such pupils." These are the only factors now listed in Virginia law.

The Federal District Court reviewed the administration of the Virginia Pupil Placement Act with respect to 30 individual pupils in *School Board of Arlington County* v. *Thompson.*[66] It found that substantial evidence supported the Board's refusal to transfer 26 of the Negro pupils to white schools. However, in the other four cases, the court found no such evidence and ordered that the pupils be admitted to white schools.

North Carolina enacted a school placement law in 1955 and amended it in the 1956 Extra Session,[67] without, however, disturbing in any way the direction given to the local boards of education. They were to make assignments of pupils "so as to provide for the orderly and efficient administration of the public schools, and provide for the effective instruction, health, safety, and general welfare of the pupils." The United States Court of Appeals for the Fourth Circuit found such a Pupil Placement Act not unconstitutional on its face.[68]

If pupil placement laws that have been found not unconstitutional on their face are administered in an unconstitutional manner, the law is not voided but merely the action. Considering the thousands of school boards scattered throughout the nation, the task of the Federal judiciary in examining cases of this sort could mean a tremendously increased workload.

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[62] 358 U.S. 101 (1958).

[63] See note 60 *supra.*

[64] Va. Ex. Sess. 1956, ch. 71, p. 77.

[65] Adkins v. School Bd. of the City of Newport News, 148 F. Supp. 430 (E.D. Va., 1957), *aff'd,* 246 F. 2d 325 (C.A. 4th Cir. 1957), *cert. denied,* 355 U.S. 855 (1957).

[66] 166 F. Supp. 529 (E.D. Va., 1958).

[67] N.C. Ex. Sess. 1956, ch. 7, p. 14.

[68] Carson v. Warlick, 238 F. 2d 724 (4th Cir. 1956).

Without statutory sanction, segregation of Latin-American children was attempted in Texas under the guise of a language requirement. The Driscoll Consolidated Independent School District has been holding without advancement for four years all first and second graders of Mexican descent in separate classes. The U.S. District Court enjoined the school officials from segregating pupils on any other than *individual* language ability, determined in good faith by scientific tests recognized in the field of education.[69]

(*7*) *Probes into new types of education*

Some States have also explored the possibility of avoiding the consequences of desegregation by using television in education. An example is the action by the Georgia Senate in February, 1959, when it created a Committee of three of its own members to consult with the State Board of Education. The Committee was instructed to "see if a crash program of television education is possible at this time." The resolution directed the Committee to explore the feasibility of grading pupils in television classes.[70]

(*8*) *Segregation by choice*

The State of Tennessee enacted legislation in 1957 authorizing local boards of education to provide separate schools for white and Negro children when the parents, legal custodians, or guardians voluntarily stated such a preference.[71]

This Tennessee School Preference Act was declared unconstitutional by the Federal District Court in *Kelley* v. *Board of Education of the City of Nashville*, *in* 1957.[72] The court stated that such schools, once set up, would not only be separate schools but would be separated because of race and for no other reason. In addition, the separation, once made, would be compulsory because no colored student thereafter would have a right to attend a school designated as a white school, regardless of convenience or any other factor.

The Texas legislation of 1957 forbade school districts to eliminate their segregated systems of education without a referendum in the district.[73] The U.S. Court of Appeals of the Fifth Circuit on August 27, 1957, refused to accept this legislation as a valid excuse for not proceeding with desegregation in Dallas.[74]

(*9*) *Court pronouncement upon evasive tactics*

The fate of evasive tactics may best be indicated in the September 29, 1958 language of the U.S. Supreme Court: "State support of

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[69] Hernandez v. Driscoll Consolidated Independent School District, Civ. No. 1384, S.D. Tex., Jan. 11, 1957, 3 *Race Rel. L. Rep.* 329 (1958).

[70] Ga. Acts 1959, S. Res. No. 55, C C H Legis. Serv. Ga. 373 (1959); compare Va. 1st Spec. Sess. 1959, H.R.J. Res. 17–x, C C H Legis. Serv. Va. 23 (1959).

[71] Tenn. Laws 1957, ch. 11, p. 36.

[72] Civ. No. 2094, M.D. Tenn., Sept. 6, 1957, 2 *Race Rel. L. Rep.* 970 (1957).

[73] Tex. Acts. 1957, ch. 287, p. 683.

[74] Borders v. Rippy, 247 F. 2d 268 (3rd Cir. 1957).

segregated schools through any arrangement, management, funds, or property cannot be squared with the [Fourteenth] Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of the law.[75]

[75] Cooper v. Aaron, 358 U.S. 1, 19 (1958).

CHAPTER VI. SCHOOL SEGREGATION IN THE NORTH AND WEST

Although attention has been focused on school segregation in the South, it would be both unrealistic and unfair not to note the presence of discrimination in Northern and Western school systems. Space would not permit a definitive analysis of problems as diverse as the ones encountered in these far-flung areas even if comprehensive information on them were available, yet a number of the salient situations can be presented. The treatment will follow four categories:

(1) Segregation and Desegregation in the "Permissive States."

(2) Instances of Compulsory Racial Segregation without Sanction of State Law.

(3) Segregation Resulting from Residential Patterns.

(4) Fair Educational Practices Legislation.

SEGREGATION AND DESEGREGATION IN THE "PERMISSIVE STATES"

School systems in Kansas, New Mexico, and Arizona were maintaining compulsory segregation of Negroes under sanction of State Law in 1954 when the decision was handed down in the *School Segregation* Cases.[1] It is significant that the process of desegregation had begun in all of these States before 1954.

The Negro in Kansas

Of the three States, only Kansas had a long history of school segregation under State law. In 1862, the Kansas Legislature first made provision for separate schools for colored children in cities of not less than 7,000.[2] Eventually, through amendment and clarification, the segregation provision became applicable only to the grades below high school and in cities of the first class (15,000 population), except that in Kansas City segregation was expressly permitted at the high school level as well.[3]

In recent years, at least 11 "first-class cities" in Kansas have been maintaining separate schools for Negro children.[4] In addition, however, various communities throughout the State, particularly in cities of the second and third class, boards of education were conducting separate schools without lawful authority. The courts in a long list of cases dating from 1881 have repeatedly held that the boards

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[1] See Education Section, Chapter II, p. 158ff.

[2] Gen. Laws Kans., 1862.

[3] Kans. Laws 1905, ch. 414, sec. 1.

[4] 11 Bulletin of the Government Research Center, University of Kansas (Nov. 11, 1955).

did not have such power conferred on them by the Legislature.[5] The most recent case involved Bonner Springs. The court found that this city of the second class had been maintaining a segregated school for colored children and said that this was unlawful under the Kansas "permissive segregation" law, since the latter applied only to cities of the first class.[6]

The Board of Education of Topeka, Kans., was one of the defendants in the *School Segregation* Cases. However, eight months before that decision, the Topeka board voted to end segregation in the elementary schools.[7] Their first step toward desegregation was taken in the fall of 1953, in elementary schools in areas where the impact would be least. Substantially more schools were desegregated in the fall of 1954. In October, 1955, the local federal court approved the Topeka desegregation plan, which required, except in unusual circumstances, that pupils attend the school in their district of residence without regard to race.[8]

Kansas City, Kans., just across the river from its sister city in Missouri, is the second largest city in the State and the one with the largest Negro population. It began its desegregation program in September, 1954, at both elementary and high school levels. Slightly more than one-fifth of the school population was Negro, but because 80 percent of the Negroes lived in one district of the city, the impact was not great.[9]

Coffeyville, on the Oklahoma border, desegregated at the junior high school level in 1954. In 1955, Negro elementary school pupils were given the choice of attending either the school in their own district or a school where Negroes predominated. The city had had two Negro elementary schools. Ft. Scott discontinued grades five through eight in its Negro school in 1955. Further desegregation depended on the availability of new school facilities.[10]

In Leavenworth, the integrated high school had a history of desegregation of other school facilities and activities outside the classroom. This, and the presence of the large integrated federal military installation just outside of the city, were considered important factors in getting community acceptance of a desegregation plan that began in 1954 with the first grade.[11] However, the Leavenworth School Superin-

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[5] Bd. of Education v. Tinnon, 26 Kans. 1; Knox v. Bd. of Education, 45 Kans. 152; Cartwright v. Bd. of Education, 73 Kans. 32; Woolridge v. Bd. of Education, 98 Kans. 397; Cameron v. Bd. of Education of City of Banner Springs, 182 Kans. 39, 318 P. 2d 988 (1958).

[6] Cameron v. Bd. of Ed., 182 Kans. 39, 318 P. 2d 988 (1958).

[7] S.S.N., Oct. 1954, p. 16.

[8] Brown v. Board of Education of Topeka, Kans., 139 F. Supp. 468 (D. Kans. 1955).

[9] 11 Bulletin of the Government Research Center, University of Kansas (Nov. 11, 1955); S.S.N., Oct. 1954, p. 16.

[10] *Ibid.*

[11] Nashville Conference, pp. 20–21.

tendent stated that he received the most bitter objection to the desegregation program from U.S. Civil Service employees and military personnel who were from Southern States.[12]

The Leavenworth program moved up a grade a year until, in the school year 1958–59, desegregation had been carried through the fifth grade.

In the school year 1958–59, overcrowded conditions in a Negro school in Leavenworth caused the School Board to accelerate the desegregation timetable and move the eighth grade of the school to a white junior high school. Negro parents were given the choice of sending their children either to the white school or to the other Negro school. Less than half chose the white school.[13]

Completion of a building expansion program is expected to bring complete desegregation in Leavenworth in the fall of 1959.[14]

The provision of the Kansas Code, Sec. 72–1724, which gave power to the boards of education of cities of the first class to segregate white and colored children, was repealed by the Kansas legislature in 1957.[15]

The Negro in Arizona

The first segregation legislation in Arizona, passed in 1909, permitted school districts to segregate pupils of the Negro race. In 1921, subsequent legislation and amendment made it mandatory for school districts to segregate Negro pupils at the elementary school level. At the high school level, segregation was authorized wherever there were 25 or more Negro pupils registered in a school, but the action had to receive the approval of the local school electors at a duly held election.[16] In 1951, the provision permitting segregation at the high school level was repealed.

The U.S. Supreme Court decision was more of an anticlimax to desegregation activity in Arizona than an implementing factor. The pressures that caused the State Legislature to repeal the mandatory segregation law in 1951 and revert to "permissive segregation" were the same pressures that influenced many Arizona communities to desegregate schools just as soon as the new legislation was effective.[17] Also more instrumental even than the U.S. Supreme Court decision were two unreported cases in Maricopa County in 1953 and early 1954. In these, both judges held that in 1951 the "permissive segregation" statute was unconstitutional and that it provided no valid basis for segregating the races in public schools. Both appar-

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[12] *Id.* at 22–23.

[13] *Id.* at 23.

[14] Statement of Leavenworth School Superintendent submitted to the Commission; Nashville Conference, p. 29.

[15] Kansas Laws of 1957, ch. 389 S1.

[16] Ariz. Laws 1921, ch. 137 Ariz. Rev. Stat.

[17] Nashville Conference, pp. 170–71.

ently ruled that segregation itself was a form of inequality.[18] Shortly after the second opinion, in 1954, and prior to the decision in the *School Segregation Cases*, the Maricopa County Attorney warned school boards that it was thenceforth illegal to appropriate public funds for segregated schools.[19]

The county in which these cases arose is in south-central Arizona and contains one-half of the State's total population. Maricopa County also has proportionately more Negroes than other sections of the State. Phoenix, the capital and largest city, is located here. The Phoenix school system, also the State's largest, had an enrollment that was 15 percent Negro at the time of desegregation.[20] There were three Negro elementary schools and one Negro high school, totaling about 2,200 children.

Phoenix had announced plans for partial desegregation in the fall of 1953. Communities outside the city had been transporting their Negro children to the city's segregated schools for many years, thus increasing the Negro school population. Refusal to admit Negro children to Phoenix's white schools led to these two court decisions, which held the State's new permissive segregation law unconstitutional.

In 1953 the white high schools of Phoenix were rezoned and students were to attend the school nearest their homes, except that the Negro high school was retained as an optional or open school for the whole system. The plan was to keep this school open until it was seen how the Negro pupils fared in the white schools. Another consideration there was the Negro teachers, who were not included in the desegregation plan the first year.

At the elementary school level, all schools were rezoned, but only the kindergarten and grades one through three were desegregated the first year. No white children were required to attend the Negro school the first year. Complete desegregation at the elementary level was to occur. In March of 1954 it was decided to close the Negro high school the following school year because of the success of the desegregation program to that date.[21]

In the school year 1945–55, the program was extended at the elementary school level, and all kindergarten children were required to go to schools nearest their homes. In September, 1955, the requirement of attendance at the school in the pupil's zone of residence was extended through the sixth grade. Children in the seventh and eighth grades were allowed to stay in the school they had been attending,

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[18] S.S.N., Oct. 1954, p. 15.
[19] *Ibid.*
[20] S.S.N., Oct. 1954, p. 15.
[21] Robin M. Williams, Jr. and Margaret W. Ryan, *Schools In Transition,* University of North Carolina, 1954, pp. 157–65.

even though it was not in their own zone. The program was completed in the schoool year 1956–57, although eighth graders were allowed to finish that year in the school they had been attending.

No "trouble" was reported in the transition of the Phoenix schools. A few families moved to avoid desegregation, and a few transfers were granted in hard cases for the same reason. Important factors in the success of the program, according to the school superintendent, were its "gradualism" and the policy of keeping the parents and the community fully informed.[22]

Pinal County is located in south-central Arizona between Phoenix and Tucson. It is a rural county; agriculture and mining are the principal pursuits. The Negro population—about six percent of the total—lives primarily in the valley towns in the western half of the county.[23] A general move to desegregate was initiated before the 1954 Supreme Court decision, according to the county school Superintendent, because of (a) the 1951 change in the Arizona segregation statute, (b) anticipation of the Supreme Court decision, (c) substandard Negro schools, and (d) a feeling among school administrators that integregation was the only proper course.[24] In communities where the Negro schools "were so bad that the districts were happy to abandon them," the method was total and immediate. In two other communities, a gradual method was used.[25]

At the high school level two communities tried segregation for a short time but abandoned it as a failure. The athletic ability of Negro pupils often made them desirable assets to the white schools, and it is related that one community found a job for a Negro parent in order to get one of his children, an outstanding athlete, into the high school.[26]

A significant thing about the desegregation of the Pinal County schools was the almost total lack of preparation in any of the communities. In spite of this, the transition was generally smooth and without major opposition. However, there were certain difficulties in one school, which could have been avoided, the Superintendent felt, if a program of orientation for parents and children had been utilized.[27]

In the school year 1958–59 there were two schools in Pinal County that had not completely desegregated.[28]

In 1951, the Arizona provision requiring segregation at the elementary school level was amended to delete all reference to race and

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[22] S.S.N., Dec. 1955, p. 2.
[23] Nashville Conference, p. 170.
[24] *Id.* at 171.
[25] *Id.* at 171.
[26] *Id.* at 172.
[27] *Id.* at 171, 172; Statement of Pinal County Superintendent submitted to Commission.
[28] Commission Questionnaires; Nashville Conference, p. 170.

provide simply that the School Board might make such segregation of groups of pupils as it deems advisable.[29]

The Negro in New Mexico

This State never had a mandatory segregation statute. It was not until 1925 that legislation permitting the segregation of Negro children was adopted. In that year it was stipulated that local school authorities, with approval of the State Board of Education, might establish separate but equal facilities for pupils "of African descent." But there was also a provision requiring that pupils be permitted to attend the school in their own district. This was the situation at the time of the *School Segregation Cases*, but in 1955 the legislature returned to the pre-1925 situation.[30]

School segregation of Negro children was limited during the relatively brief period when New Mexican law permitted it. Available information reveals that eight communities were known to have maintained separate schools for the white and Negro races.[31] Because of the extremely small Negro population, it is doubtful that the practice was ever much more extensive than this. Apparently, four of the eight communities on which information is available completed desegregation prior to the 1954–55 school year.

The city of Carlsbad has a five-percent Negro population, with one Negro school for all grades. In 1951, the Negro high school pupils were absorbed into the white school, and some Spanish-American children were assigned to the Negro school. This initial action was taken upon petition of white high school students. A new school was built near the Negro school, and in 1954 the NAACP threatened to sue if further desegregation did not occur. In the fall of 1954, it was reported that desegregation had extended into the elementary school and that the program was about three-quarters complete.[32]

The population of Roswell, N.M., increased 90 percent between 1940 and 1950. In 1954 it was estimated to be 30,500, of whom only 3% were Negroes. Because of the cost of furnishing separate but equal facilities for the few Negro junior and senior high school pupils, these grades were discontinued in the city's one Negro school. Considerable discussion and preparation preceded this move. After the *Brown* decision in 1954, it was decided to open the elementary grades in the white schools to Negro pupils but to continue the Negro school. However, only thirteen Negro children chose to remain in the Negro school in the fall of 1954, compared with an enrollment of 154 the preceding spring. The Negro school was promptly closed. The

[29] Ariz. Rev. Stat. Ann., sec. 15–442 (1958).
[30] N.M. Stat., 1953, and as amended 1955, sec. 73–13–1.
[31] S.S.N., Oct. 1954, p. 15.
[32] Williams and Ryan, *op. cit. supra* note 21, at 174–180.

Negro principal and three Negro teachers were retained as counselors and remedial instructors.[33]

The two school systems in New Mexico that did not begin a desegregation program until the 1954–55 school year were Clovis and Hobbs. Clovis made plans to equalize facilities in 1953. Tentative school board plans to integrate at junior and senior high school levels were not looked upon favorably by the Negro community. In July, 1954, it was announced that all Negro junior and senior high school pupils would be assigned to white schools. A new large elementary school district was created, which included two schools, one that had served the Spanish-American population and the former Negro school. Anglo-American pupils who lived in this district were allowed to attend other schools.[34]

Hobbs is a rapidly-growing boom town that owes its development primarily to the expansion of the oil industry in southeastern New Mexico. With about a nine-percent Negro population, it had more Negroes than any other city in the State except Albuquerque, which is much larger.[35] The first segregated school was constructed in Hobbs in about 1933 as the result of a petition circulated among the Negro community by a Negro who had a daughter qualified to teach school.[36] In 1954 there was one Negro school for grades one through twelve, with a Negro principal and sixteen Negro teachers. Within a few days of the U.S. Supreme Court decision in 1954, the School Board met to consider the problem and was told by its attorney that if it did not desegregate the Hobbs schools in the fall of 1954 it would be open to immediate suit under the Federal Civil Rights Act, 18 U.S.C. Sec. 241. Furthermore, the Board realized that if it continued to assign and hire teachers on the basis of race, it might be sued under the State's Fair Employment Practices Act.[37]

The plan that was developed included basically complete desegregation of both the student body and teaching staff in the fall of 1954. Grades seven through twelve in the former Negro school were eliminated, and various school attendance boundaries were altered somewhat. Some white students lived within the boundaries of the former Negro school. It was announced early that pupils would be expected to attend the school in their district, and that in all probability some Negro teachers would be teaching white pupils. Public reaction made it advisable to soften the attendance policy. Transfers out of a school zone were allowed upon written request, if space was available in the preferred district.[38]

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[33] S.S.N., Oct. 1954, p. 15; Williams and Ryan, *op. cit. supra* note 21, at 190–197.
[34] Williams and Ryan, *op. cit. supra* note 21, at 212–19.
[35] *Id.* at 198–202.
[36] *Ibid.*
[37] Nashville conference, p. 11.
[38] Materials furnished the Commission by the Hobbs School Superintendent.

Although there were predictions of violence, none occurred, and Hobbs desegregation plan was implemented without serious incident. Its success was attributed to careful planning, a policy of keeping the public fully informed, and the maintenance of a strong stand by those in authority.[39] At present, all of the city's eleven schools are reported to have Negro enrollment.[40]

On November 24, 1958, a dynamite blast wrecked one room in a desegregated junior high school in Hobbs. The school had about a 10-percent Negro enrollment. This was the first incident of its kind in the community, and because of the five trouble-free years since school desegregation had been accomplished, it was speculative whether or not the blast was connected with the racial issue.[41]

Indians and Spanish-Americans in Arizona and New Mexico

In Arizona and New Mexico, American Indians and Spanish-Americans both far out-number the Negroes. These two groups have been, and to some extent still are, subject to segregation and discrimination.

The status of the American Indian has been influenced primarily by his relationship to the Federal Government. Most of the Indians in both States live on reservations. They are to a large extent out of contact with the community at large. Only in recent years has this isolation been diminishing.

It is not apparent that Indian children were ever segregated in the public schools of either Arizona or New Mexico. Until recently almost all Indians were educated in Federal schools on the reservations. In 1934, the Federal Government made funds available to reimburse school districts that accepted Indian children from the reservations into the local public schools. Arizona and New Mexico passed legislation to allow the State boards of education to enter into contracts with the Department of Interior for this purpose.[42]

A recent newspaper article reported that 13,231 Indian children were in Federal schools on Indian reservations in Arizona. An additional 2,428 were in sectarian mission schools, and 7,884 were attending the State's public schools.[43] It is thus seen that one-third of the Indian children attending school in Arizona are enrolled in regular public schools. The article went on to point out that the Federal payment for the education of the Indian child was often as much as five times the per capita cost of the locality receiving the payment.

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[39] Nashville Conference, pp. 17–18.

[40] Commission Questionnaire; but see Nashville Conference, p. 16, which indicates that perhaps two schools have no Negroes enrolled.

[41] *The New York Times*, Tues., Nov. 25, 1958.

[42] Ariz. Rev. Stat. Ann., Sec. 15–442 (1958).

[43] *Arizona Republic*, Aug. 14, 1958.

The Pinal County Superintendent of Schools stated that Indian children had always been welcome in the white schools, particularly in recent years with the Federal subsidy. The reservation schools are only for Indian children. Children of white employees and others who live on the reservations go to schools in adjacent communities.[44]

New Mexico and part of Arizona are grouped in the Gallup Administrative Area of the Bureau of Indian Affairs. New Mexico has the majority of Indians in this area. A recent report reveals that of the 34,585 Indian school children in the Gallup Administrative Area, 11,095 were in public schools. Of the New Mexican Navajos (the most numerous Indians in the State), 4,564 children out of 12,204 were in public schools. This report lists two nonreservation boarding schools operated by the Bureau of Indian Affairs in the Gallup Administrative Area, both in New Mexico. The total enrollment of these schools for the fiscal year 1958 was 1,440.[45] Recent newspaper articles indicate that there is a movement to integrate the enrollment of these schools into the local public schools.[46]

The term "Spanish-Americans" is sometimes used in New Mexico and Arizona to include at least two distinct groups. One group is made up of people who have had a long history in the area. Many of these are people of wealth, influence, and prominence in their communities. They often trace their genealogy directly back to the early Spanish settlers in this hemisphere. The other group is composed of people of recent immigration from Mexico. Many are illiterate and lacking in economic resources. Language difficulties increase their problems of adjustment. It is this second group that has borne the brunt of discrimination.

Provisions of the New Mexico Constitution provide for the training of teachers so that they can become proficient in both English and Spanish and thus qualify for the teaching of Spanish-speaking pupils. It is clearly stated that children of Spanish descent shall never be classed in separate schools.[47]

In spite of these provisions, separate schools for Spanish-American children apparently once existed. Whether this was an enforced segregation because of language problems, or whether it existed merely because of residential grouping or through parental choice, is not definitely known.

It is known that an all Spanish-American elementary school existed in Clovis and figured in that city's desegregation plans. Anglo-American children in the Negro and Spanish-American residential

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[44] Nashville Conference, pp. 173–74.

[45] U.S. Department of Interior, Bureau of Indian Affairs, *Statistics Concerning Indian Education, Fiscal Year 1958*, pp. 8, 14.

[46] *Albuquerque Journal*, Aug. 4 and 10, 1958.

[47] N.M. Const., sec. 8, 10.

areas had the option of attending other schools and apparently had always exercised it.[48]

In Las Cruces there was, until recent years, little contact between the Anglo-American population and the Spanish-American. This was reflected also in the school system. All Spanish-American children attended one elementary school, apparently by parental choice, even though many did not live in the school district.[49]

It is impossible to evaluate from available sources the extent and present status of segregation of Spanish-American children in New Mexico, but the patterns of segregation and discrimination in respect to this group had long been diminishing. One is led to believe that there is now no compulsion in whatever segregation may still exist.

There was no express provision in State law of Arizona for the segregation of Spanish-American children, but there was a general statutory provision that allowed school districts to stipulate segregation of pupils as they deemed it advisable.[50] On this authority, and because of alleged language difficulty, Spanish-American pupils were often segregated, at least in the lower grades. This practice had been dying out when in 1951 a Federal District Court held that English language deficiencies did not "justify the general and continuous segregation in separate schools of children of Mexican ancestry from the rest of the elementary school population."[51] The petitioners in this class action claimed that this segregation practice denied them the equal protection of the law and due process of law under the Fourteenth Amendment to the U.S. Constitution. The court found substantial inequality of facilities and could have rested its opinion solely on that ground, but it went further than this. The following language is significant in the light of the subsequent decision of the U.S. Supreme Court in 1954:

> A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school associations, regardless of lineage.[52]

Separate schools for Spanish-American children existed in Pinal County in at least two cases, according to Miss Mary C. O'Brien, the County School Superintendent. She stated that there were about 7,000 children of Mexican extraction in a total of 15,000 school children in Pinal County.[53] The two instances of segregation apparently resulted from sharp community or residential segregation. In one instance, all Spanish-American people lived in one section of town.

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[48] Williams and Ryan, *op. cit. supra* note 21, at 216.
[49] *Id.* at 182, 184.
[50] Ariz. Rev. Stat. Ann., sec. 2750 (1913).
[51] *Gonzales* v. *Sheely*, 96 F. Supp. 1004, 1009 (D. Ariz. 1951).
[52] *Ibid.*
[53] Nashville Conference, p. 174.

In the other, there were actually two towns side by side, one for Anglo-Americans, and one for Spanish-Americans.[54] As a consequence, there developed through custom and usage, distinct and separate school divisions based on national origin, yet administered under the same system.

There are many Spanish-American teachers in the public school system of Arizona.[55] The following statement exemplifies the changed status of this group in Arizona:

> This changed attitude toward persons of Mexican origin is long past due, but is in evidence. Mexican people are now being recognized in their full potential, assuming places of significance in the political, social, and educational life of the community.[56]

Summary—The "Permissive States"

Even before the 1954 decision of the U.S. Supreme Court, there existed in Kansas, New Mexico, and Arizona a combination of factors that forecast the end of segregation in the public schools. On the whole, the process is now complete in these three States insofar as the compulsory type of school segregation is concerned. The transition can be characterized as smooth, uneventful, and successful.

Of the three States, only Kansas resembled the States bordering the Deep South in history, custom, and attitude. However, many factors common to all three set them apart from the Border States in the matter of school segregation.

The patterns of segregation and discrimination in areas of community life other than the public schools had been breaking down at an even more rapid rate in Kansas, Arizona, and New Mexico than in the Border areas. There had never been as complete or statewide a pattern as in the Southern States. And at least in Arizona and New Mexico, discrimination was often directed toward several minority groups. At times there was discrimination between and among these minority groups themselves. Thus sentiments were of a diverse and not consistent nature, and this tended to ease the transition for any one group.

The presence of other minority groups such as the Spanish-American can be said, in most cases, to have aided the transition, but there were instances of opposition to desegregation of Negro schools coming primarily from this group in both Arizona and New Mexico. The answer would appear to be that where the Spanish-American people were well established in a community and had gained acceptance and stature, they were generally sympathetic toward the position

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[54] Statement of Pinal County Superintendent of Schools submitted to Commission.
[55] Nashville Conference, p. 174.
[56] Note 54, *supra*.

of other minority groups. But where the Spanish-American population had arisen primarily through recent immigration and was itself experiencing discrimination and non-acceptance, there was a tendency for this group to look down upon the Negro and oppose improvement in his status.

The smallness of the Negro population often meant costly and inadequate schools. This factor in desegregation was even more important in these States than in the Border States. The rapid increase of population in Arizona and New Mexico, which created the need for a greatly expanded school system, made these small segregated schools seem an even greater waste of money and administrative energy. It might almost be said that the practice of segregation in these instances had outlived its purpose and spelled its own demise.

Most often the entire Negro enrollment was absorbed into the white schools, and the Negro school abandoned. Where the Negro enrollment was proportionally larger and the school building was needed in the system, Negro pupils were often integrated at the high school level and other grades were desegregated from the top down. A system of districting was often employed, usually with either the Negro children or the white children, or both, having an option to attend other schools, thus permitting "voluntary segregation."

INSTANCES OF COMPULSORY RACIAL SEGREGATION WITHOUT SANCTION OF STATE LAW

School segregation was also practiced in the schools of certain localities in the North and West where State laws did not sanction it. Some communities even allowed it in the face of State laws prohibiting it.

A prime example is found in the State of Illinois where, since 1874, there has existed a statutory provision forbidding segregation of pupils on account of color, creed, race or nationality.[57] A study undertaken in 1952 indicated that at least 11 of the 102 counties of Illinois were maintaining separate schools for the races.[58] The Illinois State Legislature has since attempted to rectify this situation by providing State aid only to those districts that certify non-segregation of pupils.[59]

Recent occurrences in southern Illinois indicate that very troublesome racial problems exist in some communities despite the fact that the State long ago outlawed segregation. In July of 1957, a seven-man school board composed of four Negroes and three whites in the

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[57] Ill. Rev. Stat., ch. 122, sec. 6–37 (1959).

[58] William Robert Ming, "The Elimination of Segregation in the Public Schools of the North and West," 21 *J. of Negro Education,* 268 (1952).

[59] Ill. Rev. Stat., ch. 122, sec. 18–14 (1957).

town of Colp, voted four to three to consolidate the two existing separate schools. The vote was strictly along racial lines. As a result, the three white members resigned, and the Williamson County School Board voted to permit a non-Negro part of the Colp district to be annexed to a neighboring all-white district. The Negro members of the School Board charged "gerrymandering" on the part of the County Board and took the matter to court. The court reversed the County Board's decision, holding that to allow such annexation would financially cripple the Colp district. The result was a boycott of the Colp school by white students, whose parents either moved to nearby white districts or stood the cost of tuition and sent their children outside of the Colp district. The boycott was continued at the opening of school in the fall of 1958.[60]

The Commission on Civil Rights sought information from its Illinois Advisory Committee in order to make an up-to-date appraisal of the situation. The Illinois Committee found that from a strictly legal standpoint, discrimination was not apparent in public education. No school district was officially sanctioning segregation by race. However, all-Negro or predominantly Negro schools have arisen as a result of preference on the part of students or of housing patterns.

New Jersey

Another Northern State in which widespread segregation has existed in the public schools was New Jersey. Despite the fact that there had been a law since 1881 prohibiting the exclusion of any child from any public school because of race, there were at least 70 separate schools for Negroes in New Jersey in 1940. This represented an increase of 18 over the two preceding decades. However, the segregation in the New Jersey public schools, other than that arising from residential patterns, has been substantially eliminated over the past 15 years.[61]

Ohio

In Ohio, an action was brought on behalf of Negro children residing in Hillsboro, seeking to prohibit the Board of Education and other school officials from enforcing an alleged policy of racial segregation in the schools. The District Court denied relief on the ground that an injunction would disrupt the administration of the schools. However, the Sixth Circuit Court of Appeals reversed the lower court and held that refusal to issue the injunction was an abuse of discretion. On the remand, the District Court issued the injunction and ordered

[60] *Chicago Daily Tribune,* Sept. 3, 1958, p. 12F, col. 1.

[61] Marion Thompson Wright, "New Jersey Leads in the Struggle for Education Integration," 26 *J. Educ. Soc.* 401 (1953).

that segregation be ended by the beginning of the 1956 school year.[62] The Board of Education subsequently asked the State Attorney General to determine how the term "the law" should be construed in regard to the distribution of State funds to local school boards. The term was held to include interpretations by the courts as well as statutory and constitutional provisions. Thus, the State Board of Education may withhold funds from local boards that have not "conformed with the law" by allowing segregation to exist in the public schools under their control.[63]

Pennsylvania

A statewide survey ordered by the Governor of Pennsylvania indicated that three Pennsylvania school districts practiced segregation in their elementary schools in 1957. At that time the Governor promised immediate action, and the local school superintendents said plans for desegregation were under way and should be completed in periods of from six months to three years.[64] The Commission brought this matter to the attention of its Pennsylvania State Advisory Committee. The Committee's report cited a statement of January 16, 1959, based on a Department of Public Instruction report, which indicated that the problem in the three districts had been cleared up and that compulsory segregation of this sort had not been uncovered elsewhere.

Summary

Despite general progress toward the elimination of racial discrimination, segregated schools still exist in some communities outside the South, sometimes in outright disregard of State laws specifically prohibiting them. Those responsible are clearly guilty of violating the laws of their own States, as well as the Constitution of the United States.

SEGREGATION RESULTING FROM RESIDENTIAL PATTERNS

The trend of Negro migration to the nation's largest metropolitan areas is bringing about new patterns of segregation of residential areas. Increasingly serious social and economic problems are accompanying these patterns. One result, of course, is *de facto* segregation of many schools.

The residential areas, and the one-race schools that result, arise without the force of any legal compulsion. These cities have no laws requiring segregated schools, no laws designating segregated housing along racial or ethnic lines. Neither are the school attend-

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[62] Clemons v. Board of Education, Civ. No. 3440, S.D. Ohio, April 11, 1956; 1 *Race Rel. L. Rep.* 518 (1956).

[63] Op. no. 6810, July 9, 1956; 1 *Race Rel. L. Rep.* 985 (1956).

[64] *Christian Science Monitor*, May 15, 1957.

ance zones necessarily gerrymandered to produce *de facto* segregation in schools.[64a]

Especially where language is a problem, minority groups often prefer to live among others having the same background. All-Puerto Rican, or all-Latin American communities have grown up without overt discrimination, but the citizens in these one-race communities have often found that discrimination in employment limits their income and thus their ability to choose suitable homes. If prosperity comes to them, they may find that social factors restrict them, as when the whites in a community refuse to accept a family of another race as their neighbors.

School officials in these one-race communities are faced with difficult problems they did not create. Chicago has had very severe difficulties of this kind. In 1958, 72 white students boycotted their assigned school because it was predominantly colored,[65] and racial battles between white and Negro students have also occurred recently in that city.[66] The Illinois House of Representatives recently passed a bill designed to avoid alleged racial segregation in the Chicago schools. The charges of segregation were denied, but a Chicago Representative, when queried, said Negro schools were on crowded double-shift classes, while neighboring districts contained schools with empty classrooms.[67]

Reports to this Commission from its State Advisory Committee of Minnesota indicate that this type of *de facto* segregation exists within that State. Although the public education system had no inherent or deliberate discriminatory practices in any of its school districts, discriminatory attitudes existed and there were pockets of all-Negro enrollment. The Committee concluded that discrimination by residential pattern, occupational role, and community attitude created serious problems, which, however, could be helped by sustained emphasis on better human relations. Other state committees have reported similarly.

New York City has been particularly concerned with this problem of *de facto* segregation ever since the Supreme Court's decision. In December, 1954, the city's Board of Education passed a resolution appointing a Commission on Integration to examine the matter. The

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[64a] A document in the Truman Committee files concerning the civil rights of Mexican-Americans illustrates the manner in which such *de facto* segregation can involve a deprivation of equal protection of the laws. A study of a Texas town revealed that largely due to residential patterns Mexican-American and Anglo-American children attended separate schools and that the physical facilities available to the Mexican-Americans were shockingly inferior, due to the refusal of the town authorities to divide expenditures between the two schools equitably.

[65] *Los Angeles Times*, Sept. 12, 1958.

[66] *Detroit News*, Sept. 25, 1958.

[67] *Chicago Tribune*, April 16, 1959.

Commission submitted its report in June of 1958, stating at the outset that the existing residential segregation created inequality on the following basis:

> Increasingly, the schools in the colored neighborhoods of Greater New York, have tended to be older, less well equipped and more crowded than the schools in the white neighborhoods; the quality of teaching provided in these predominantly colored schools has also suffered.[68]

The problem in New York City was considered one of "integration" as opposed to "desegregation." Under law, segregation was illegal. But in order to alleviate the situation arising from *de facto* residential segregation, some method of integration was sought. The Commission recommended that this might be achieved: (1) through substantial rezoning, to be undertaken by a new bureau with the specific objective of integration;[69] (2) through "strategic building in the fringe areas" to "anticipate and in some degree . . . prevent the growth of future school and residential segregation;" and (3) through reassignment of school personnel "to reduce and eventually overcome the present *de facto* discrimination against minority groups." [70]

These recommendations were unanimously approved by the Board of Education. A central zoning unit has been set up to work out long-range zoning patterns. But implementation of the program will not be an overnight job, and there still is doubt on the part of some that full implementation will ever be accomplished.

An interesting situation arose in New York in 1958, when four Negro mothers boycotted Harlem public schools because they did not want to accept "an inferior education" for their children in segregated schools. The Domestic Relations Court found the mothers guilty of violating the Compulsory Education Law, but when the Board designated other schools which the mothers accepted, the court freed them.[71]

A different decision was handed down by Justice Polier, on December 15, 1958, when she ruled that two parents were within their rights in withdrawing their children from two Harlem schools. The Justice said these schools were discriminatory and inferior. The Board of Education filed an appeal, but decided later to reconsider this action.[72] The facts existing in New York and other cities show that the problems arising out of *de facto* segregation are difficult and will take long to solve.

The young State of Alaska is concerning itself with the legality of the schools it operates for natives. Chiefly concerned are the vast areas served by the 75 schools of the Alaska Native Service. There

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[68] Board of Education of the City of New York, *Toward the Integration of our Schools*, Final Report of the Commission on Integration, June, 1958, p. 5.
[69] *Ibid.*, p. 17.
[70] *Ibid.*, p. 9.
[71] *New York Times*, Feb. 19, 1959.
[72] *Ibid.*, Feb. 27, 1959.

are about 5,000 native students in this system, along with an estimated 100 whites. About 6,800 other native students go to public schools in cities. These natives do not live on reservations, nor are they wards of the government like the American Indian.[73]

FAIR EDUCATIONAL PRACTICES LEGISLATION

Several States have attempted to deal with the problem of school discrimination by specific legislation.[73a] The various statutes concerning educational practices currently in effect in the States of Massachusetts, New York, New Jersey, Washington, and Oregon reveal great differences in the degree of protection they extend. The Massachusetts Fair Educational Practices Act,[74] for example, provides very broad coverage, whereas Oregon has only a narrowly defined anti-discrimination statute.[75]

The Massachusetts F.E.P.A.[76] affects the admission policy of every educational institution that is not distinctly private or denominational [77] and safeguards the right of every citizen.[78] It forbids not only the making of written or oral inquiry of an applicant concerning race, color, religion or national origin, but also prevents the imposition of sanctions against such persons for "participating in any proceeding under the Act." [79] The Massachusetts Commission Against Discrimination possesses the power to conduct conciliatory investigations and hearings upon complaint of possible violations and to issue cease-and-desist orders and dismissals of complaints pursuant to its determinations.[80] Judicial review of these is provided.[81]

The penalty to be incurred through violation of the Massachusetts anti-discrimination statute is a fine not to exceed $500 and/or one year imprisonment.[82] This penalty, though comparatively harsh, is repre-

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[73] *New York Times,* Mar. 1, 1959, p. 54.

[73a] One of the recommendations of the Truman Committee was that State legislatures enact fair educational practice laws for public and private institutions, prohibiting discrimination in the admission and treatment of students based on race, color, creed, or national origin. (*To Secure These Rights,* Report of the President's Committee on Civil Rights, 1947, p. 168.)

[74] Ann. Laws of Mass., ch. 151C, secs. 1, 2 (1949).

[75] Oreg. Rev. Stat. (1953), sec. 345.240.

[76] Ann. Laws of Mass., ch. 151C, sec. 1(b).

[77] Opinion of the Massachusetts Commission Against Discrimination indicates that this exception will be confined to schools of a very restrictive type such as a nursery for the children of faculty members of a school or an ultra-exclusive finishing school for girls. Massachusetts Commission Against Discrimination. *Bulletin of Policies, Interpretations, Rules and Regulations* (1957).

[78] Ann. Laws of Mass., ch. 151C, sec. 2(a).

[79] *Id.* at sec. 2 (b) & (c).

[80] *Id.* at sec. 3. This was the method of enforcement recommended by the Truman Committee. (*To Secure These Rights,* Report of the President's Committee on Civil Rights, 1947, p. 168.)

[81] *Id.* at sec. 4.

[82] Ann. Laws of Mass., ch. 272, sec. 98.

sentative of the penal statutes of all five of the States under consideration

In New York, the education law, though similar in most respects to its Massachusetts counterpart, is not so comprehensive. Reference is made only to post-secondary schools and those of a business or trade school character which are subject to examination by the State Board of Regents.[83]

Although New York does not forbid oral or written inquiry concerning an applicant as does Massachusetts,[84] there is an identical prohibition against reprisal for participation in any investigation under the Act.[85] New York, furthermore, has amplified the Massachusetts prohibitions by declaring it to be an unfair educational practice to accept any gratuity conditioned upon teaching the doctrine of the supremacy of any race.[86]

Although there is apparent restriction in the coverage of New York's education law the legislature has given its Civil Rights Law almost universal application. In assuring equal access rights in places of public accommodation, the following institutions are enumerated: "kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses under the supervision of the New York Board of Regents," and in the nature of a catch-all, "any publicly supported school." [87] The New York Board of Regents,[88] whose decisions are reviewable by the Courts,[89] is the appropriate instrument for enforcing the anti-discrimination laws herein detailed.

In much the same fashion as New York, New Jersey has confined the range of its educational discrimination act to "all public schools attended by children between the ages of four and twenty years." The penalty for violation is similar in gravity to that mentioned for Massachusetts.[90] Though adults are placed beyond the span of the New Jersey statute, this limitation is complemented by a statute designed to foster equal opportunity in places of public accommodation.[91] The latter statute affords protection against discrimination in public education [92] to all persons regardless of age.[93] In contradistinction to

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[83] Education Laws, sec. 313 (1) & (2).

[84] On June 30, 1950, the administrator of the act reported that direct questions concerning race, religion, color, or national origin had almost completely disappeared from the application blanks of the colleges and University of the State. Edward N. Saveth, "Fair Educational Practices Legislation," 275 *Annals of The Amer. Acad. of Political and Social Science,* 41 (1951).

[85] Education Laws, sec. 313(3)(b).

[86] *Id.* at sec. 313(3)(c).

[87] *Id.* at sec. 40.

[88] *Id.* at sec. 313(5).

[89] *Id.* at sec. 313(16).

[90] N.J. Stat. Ann. tit. 18, sec. 18 : 14–2.

[91] *Id.* at tit. 18, ch. 25, sec. 18 : 25–4.

[92] Ops. Att'y Gen. N.J., 1954–55, p. 42.

[93] N.J. Stat. Ann. tit. 18, ch. 25, sec. 5.

the Massachusetts statute, which prohibits written inquiry of prospective students that might tend to indicate discriminatory admissions practices,[94] the New Jersey Civil Rights Law distinctly permits "the mailing of a private communication sent in response to a specific written inquiry." [95]

There has been created in New Jersey a dual enforcement agency. One body is the Division Against Discrimination of the Department of Education,[96] which is vested primarily with the power to prevent and eliminate discrimination in employment. The other is the State Civil Rights Commission,[97] which was organized to supervise and implement the activities of the first group.[98]

In the leading New Jersey case of *Walker* v. *The Board of Education of The City of Englewood*,[99] which was decided on May 19, 1955, the Commissioner of Education enunciated the unalterable principle that a child is entitled to attend the school nearest his home unless over-riding reasons render this impracticable. Thus it was held that where a school board adopted new district lines, thereby requiring a Negro student to leave a predominantly white school in favor of a predominantly Negro school, there was infringement of civil rights through failure of the board to comply with well-settled principles of school administration regardless of intent or motivation. The Commissioner further stated that such action could only be justified where the following compelling reasons exist: overcrowding, safety factors, a pupil's need for specialized education, or the necessity for grade grouping.

The State of Washington, through the close of the 1957 legislature, had not enacted any law that might be labeled a Fair Educational Practices Act. Furthermore, neither that State nor New Jersey nor Oregon has pronounced what precise activity is to be considered an unfair educational practice. The Washington Civil Rights Law,[1] however, is sufficiently extensive in its language to evince an intent to provide protection to any prospective student. It makes certain that the right to full enjoyment of any public accommodation or facility will be preserved.[2] The term "public accommodation" is defined to encompass public educational institutions and nursery schools,

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[94] Ann. Laws of Mass., ch. 151C, sec. 2(b) (1949).

[95] N.J. Stat. Ann. tit. 10, ch. 1, sec. 10 : 1–5.

[96] *Id.* at tit. 18, ch. 25, sec. 18 : 25–6.

[97] N.J. Stat. Ann., ch. 27, sec. 7.

[98] Between 1945 and 1957 a total of 2,336 complaints were received; 1,664 alleging discrimination in employment and 672 alleging denial of equal opportunity in places of public accommodation. State of N.J. Dept. of Educ., Div. against Discrimination, *Annual Report* (1957).

[99] N.J. Dept. of Education, Div. Against Discrimination, No. M–1268, May 19, 1955; 1 *Race Rel. L. Rep.* 255 (1956).

[1] Wash. Rev. Code, ch. 37, sec. 3 (1951).

[2] *Id.* at sec. 3(2).

and, though exempting distinctly private or sectarian institutions, it includes them "where public use is permitted therein." [3]

Washington's unfair practices statutes pertaining to public accommodations are broad enough to apply to the area of education as well.[4]

It appears that the State of Oregon accords the least protection against discrimination in education of the five States under discussion. The statute in question closely confines itself to vocational, professional, or trade schools licensed under the laws of Oregon.[5] However, the meaning of the statute is broadened by reference to the type of institution in which "any form of State approval is required in order for it to operate." [6]

Oregon departs from the commonly accepted "public accommodation statutes" by delimiting the application of its statutes to public places offering food, lodging, or amusement.[7] Intent to exclude educational institutions may be inferred from this wording under the doctrine of *expressio uniusest exclusio alterius* ("the mention of one thing implies exclusion of another").

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[3] *Id.* at sec. 4.
[4] Ch. 87, Laws of Wash., 1953.
[5] Ore. Rev. Stat. (1953), sec. 345.240(1).
[6] *Id.*, sec. 345.240(2).
[7] *Id.*, Sec. 1(2).

CHAPTER VII. THE MINORITY GROUP TEACHER

The process of school desegregation can mean any one of a number of things for public school teachers belonging to minority groups. It can mean a new professional challenge or it can mean the loss of a job. It can mean virtually no change in the class room situation or the loss of the better students to "white schools."

EFFECT OF TRANSITION UPON THE NEGRO TEACHER

At a time when most areas of the country are reporting a severe shortage of teachers, a number of States undergoing desegregation have experienced a reduction in the number of Negro teachers in their school systems.

However, at Hobbs, N. Mex., the School Board's concern over its position under State law in the hiring, firing, and assignment of Negro teachers has caused it to include Negro teachers in the desegregation plan.[1] The assignment of Negro teachers to formerly all-white schools was not accomplished without objection from white parents, but all the Negro teachers were retained.[2]

At Phoenix and Tucson, Negro teachers fared well in the desegregation experience, but in Pinal County in the same State a few lost their jobs because of desegregation, and there was a tendency not to allow those who remained to gain tenure under State law.[3]

In Kansas, while some Negro teachers have been retained in predominantly Negro schools or been absorbed into formerly all-white schools, others lost their jobs. An example of the absorption of the Negro teaching staff after desegregation is found in Atchison, where all six Negro teachers were assigned to desegregated schools. In Pittsburg, on the other hand, where the Negro school was closed, no Negro teachers were reported to have remained in the school system in 1956.[4]

Generally, the integration of teachers has lagged rather far behind school desegregation, and in areas where small Negro schools have been closed and all of the pupils absorbed by the white schools, there has been a substantial displacement of Negro teachers.

As of November 12, 1958, it was reported that 344 Negro teachers in Oklahoma had been displaced through desegregation activity, which closed 163 schools.[5] Integration of teaching staffs has not

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[1] Nashville Conference, pp. 11, 13–14, 18, 19.
[2] *Id.* at 12–13, 16.
[3] *Id.* 173.
[4] Univ. of Kansas, *Bull. of Govt. Research Center,* January 15, 1956, p. 4.
[5] Oklahoma State Dept. of Pub. Instruction, *Compilation of Integration Questionnaires,* Nov. 12, 1958.

been accomplished in Oklahoma City; and although no Negro teachers have been displaced there, white teachers have been hired for vacancies that would have been filled by Negro teachers prior to desegregation.[6]

Reports from Kentucky show that 31 out of 70 school districts had a reduction in the number of Negro teachers at the time of desegregation. Twenty-eight of 48 districts report that the present percentage of Negro teachers is smaller than it was before desegregation. Only 8 districts out of 63 assign Negro teachers to predominantly white schools, and 3 out of 60 assign white teachers to predominantly Negro schools.[7] The Kentucky State Board of Education for the school year 1958–59 reported that only 3.3 percent of all Negro teachers were employed in desegregated schools, although 29 percent of all Negro pupils are enrolled in them.[8]

St. Louis and Kansas City, which together have about two-thirds of Missouri's Negro population, have integrated faculties. In the smaller communities some faculty integration has occurred, but the closing of small Negro schools has in many cases caused displacement of Negro teachers.[9]

In a Missouri law suit, *Brooks* v. *School District*,[10] Negro teachers from a Negro school that had been closed because of desegregation alleged that new white applicants had been given preference in a discriminatory manner in the filling of vacancies. The Superintendent, on the contrary, stated that the Negro teachers had been given fair consideration among all the applicants but had been found somewhat less capable. The Federal District Court found no racial discrimination and recognized as evidence the fact that Negro pupils, who had experienced scholastic difficulties when they first entered the white schools, had shown marked improvement after a semester under white teachers. Notice of appeal was filed in the case.[11]

School desegregation has apparently not greatly affected Negro teachers in Maryland. None of the 15 school systems that underwent some measure of desegregation reported a reduction in the number of Negro teachers at the time of desegregation. Today four of these districts report a smaller percentage of Negro teachers than just prior to desegregation, but three other districts show an increase.[12]

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[6] Nashville Conference, pp. 98, 99.
[7] Commission Questionnaires.
[8] Kentucky State Dept. of Educ. *Report on Integration-School Year 1958–1959.*
[9] See S.S.N., Dec. 1955, p. 14; June 1956, p. 16; May 1957, p. 12.
[10] Civ. No. 551, E.D. Mo., June 27, 1958, 3 *Race Rel. L. Rep.* 660 (1958).
[11] S.S.N., Nov. 1958, p. 4.
[12] Commission Questionnaires.

The situation in Delaware is similar. There has been virtually no net loss of jobs among Negro school personnel as a result of desegregation, although integration of teachers exists in only a few districts.[13]

In Texas, desegregation has been limited to areas of small Negro school population and has involved chiefly the closing of small Negro schools. Vacancies in the teaching staffs are not being filled by Negroes, and 50 or more Negro teachers have reportedly been displaced. Only three are known to have been retained to teach desegregated classes.[14]

A recent survey reveals that West Virginia now employs 98 (about 10%) fewer Negro teachers and principals than in 1954. Slightly more than 50 percent of the teachers are in desegregated schools.[15]

Due to the extremely limited desegregation in Tennessee, Arkansas, North Carolina, and Virginia, it is not possible to evaluate any change in the status of Negro teachers in those States.

Large cities that have desegregated their schools have, with a few notable exceptions, taken steps to desegregate their teaching staffs as well. Wilmington, Del., in the school year 1958–59 had 33 out of 170 Negro teachers in formerly all-white schools. About an equal number of white teachers were in formerly all-Negro schools. The Negro teachers were very carefully screened prior to being placed in white schools.[16] One Negro teacher who was to have an all-white first grade, visited the mothers and the children in their homes before the opening of school. At the end of the school year, these parents requested the principal to allow her to move to the next grade with their children.[17]

The teaching force of Washington, D.C., is 62 percent Negro. Negro and white teachers were working together in 23 percent of the city's schools during the first year of desegregation, and integration of the teaching staff has continued since that time.[18]

Baltimore's public school faculty is about 40 percent Negro and has shown no percentage change since 1954. There was very limited faculty integration during the first year of desegregation, but in the school year 1958–59, 37 of the city's 176 schools had members of both races on their teaching staffs.[19]

There has been no integration of teaching staffs in Louisville, Ky. The Superintendent reports, however, that there have been no serious problems over this situation, and the school administration has felt

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[13] Commission Questionnaires.
[14] S.S.N., Jan. 1959, p. 3.
[15] Nashville Conference, p. 116.
[16] *Id.* at 73, 74–75.
[17] *Id.* at 81.
[18] *Id.* at 56, 59.
[19] *Id.* at 137, 139, 140.

that integration of teachers would meet with considerably greater community opposition than did the desegregation of pupils.[20]

The facts of a recent case dramatically affirm the observation that Negro teachers, fearing loss of position, face desegregation reluctantly and even tend to obstruct it. In conjunction with a suit seeking the admission of four Negro children to a white elementary school in Okmulgee County, Okla., an injunction was sought to restrain the Negro principal from influencing Negro children to remain in his Negro elementary school. The court held him to be fully protected by his fundamental right to free speech.[21]

QUALIFICATIONS OF NEGRO TEACHERS

Opinions differ regarding the relative teaching abilities and qualifications of Negro and white teachers.

It is the opinion of Dr. Hansen, the School Superintendent of Washington, D.C., that there is no difference in the qualifications of white and Negro teachers. Washington now uses a standard examination to assure a basic level of qualification for its teachers.[22]

On the other hand, the Superintendent of Schools in Louisville, Ky., has expressed the view that the white teacher in the Louisville system is generally more competent than the Negro teacher.[23]

The teachers of Atlanta, Ga., were tested in the school year 1955–56 by the Educational Testing Service by means of the National Teacher Examinations. White teachers showed better average performance in all divisions of the test, though there was considerable overlap in the distribution of the scores. Thus, ". . . when Negro and white teachers at the same grade level or teaching the same subject are compared, about 60 percent of the scores made by white teachers are matched by a corresponding percent of Negro teachers' scores. Conversely, 40 percent of the high scores made by white teachers tend to be unmatched by a corresponding proportion of Negro teachers' scores, while 40 percent of the low scores of the Negro teachers are in excess of the corresponding percents of low scores by white teachers." [24]

The Leavenworth, Kans., Superintendent has expressed the opinion that his Negro teachers are a good average and will compare favorably and equally in preparation and efficiency. All were trained in Kansas schools.[25]

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[20] *Id.* at 154–55.

[21] Jefferson v. McCart, civ. No. 4532, E.D. Okla., Oct. 10, 1958, 3 *Race Rel. L. Rep.* 1154 (1958); S.S.N., Nov. 1958, p. 9.

[22] Nashville conference, p. 60.

[23] *Id.* at 156.

[24] *Learning and Teaching in Atlanta Public Schools, 1955–1956,* Educational Testing Service, Part I, p. 38.

[25] Nashville Conference, p. 26, 27.

DISCRIMINATION AGAINST MINORITY GROUP TEACHERS, A NATIONWIDE PROBLEM

In areas of the United States where desegregation by law has long been practiced, the minority group teacher still finds the stigma of discrimination affecting his employment, his economic status, and his self-respect.[25a]

Although 19 [26] of 33 Northern and Western States have enacted fair employment practices acts that protect the minority teacher, discriminatory practices are still discovered.

Problems of discrimination in States as far north as New Jersey reveal themselves in recent Federal litigation [27] and in proceedings before State agencies against discrimination.[28]

Fair employment acts may not necessarily afford full protection against discrimination, as is indicated by the fact that Michigan has had a reservoir of minority group teachers qualified but unemployed. One of the reasons for this, according to the Michigan Advisory Committee of the Commission on Civil Rights, is a fear on the part of many school boards that the hiring of non-white teachers may have public repercussions. Only recently, Grand Rapids assigned a Negro teacher to a white school for the first time in its history.

The Pennsylvania State Advisory Committee reported that although there were 500 school districts with Negro students, only 56 of them employed any Negro teachers.

The New England States have had few problems with non-white teachers. Like non-white citizens in other walks of life, they are very few in number. Where non-white teachers have been hired to teach predominantly white classes, they seem to have worked out very well.

The mid-Western and far-Western States also have few problems in regard to the employment of non-white teachers. Most of these States have a low percentage of non-white residents.

The Commission has received conflicting reports from at least one mid-Western State. The Director of the Omaha Human Relations Board, in answering a Commission questionnaire, said that in Omaha qualified Negro teachers are not employed and white teachers without degrees are employed, owing to the use of a quota hiring system. In answering the same type of questionnaire, the State Commissioner of

[25a] See *Hearings on Pending Civil Rights Bills Before a Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary,* 86th Cong., 1st Sess., 1959, p. 113 (remarks of the Hon. Sam J. Ervin, Jr., Senator from North Carolina).

[26] Alaska, Arizona, California, Colorado, Connecticut, Illinois, Indiana, Kansas, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Washington, Wisconsin.

[27] Baron v. O'Sullivan, 258 F 2d 336 (3rd Cir. 1958).

[28] *Trenton Evening Times,* 18 March 1959.

Education stated that Nebraska had no problem in these areas and that there was no real cause for prejudice in the State.

The Utah Advisory Committee reported to this Commission that "some inconsistent discrimination" existed in the hiring of Negro teachers, but that Mexican-American teachers were hired equally with Anglo-Americans.

A Denver, Colo., report stated that in 1955, "teachers of Negro and Spanish-American identity have been limited largely to positions in their areas of concentration." [29] However, in 1957, a Denver public school official took issue with this and stated that Denver public schools were employing personnel without discrimination.[30]

That the problem of discrimination in the hiring of teachers is serious cannot be questioned. However, reports indicate that progress is being made. Special efforts are being exerted in communities and States with large minority concentrations. Most Advisory Committees reporting to the Commission on this type of discrimination emphasized the need for more time and for achieving community enlightenment in terms of acceptance of non-white teachers on a basis of ability.

SUMMARY

1. The effect of school desegregation upon Negro teachers varies according to community conditions and with the type of desegregation plan adopted. In small rural communities where Negro schools are absorbed into the existing white schools, the Negro teacher has faced possible loss of employment. However, in large cities with heavy concentrations of Negro population, the Negro teacher not only usually finds employment but may become increasingly useful as integration of teaching staffs proceeds. Southern traditions and customs can, of course, alter this prospect.

2. In refusing to hire Negro teachers, school officials may be exercising racial discrimination or they may be acting on an honest appraisal of qualifications. The greatest detachment is needed in order to evaluate ability impartially amid strong community sentiment.

3. Discrimination against the minority group teacher is not restricted to one section of the nation. It exists in varying degrees in many sections, despite fair employment acts. The evidence indicates that some communities in the North and West are not yet willing to accept the concept of equal opportunity in teaching.

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[29] Denver Commission on Human Relations, *Denver Inventory of Human Relations, Education Section,* Denver, 1955, p. 213.

[30] *Id., Fourth Annual Report,* Denver, 1957, p. 8.

CHAPTER VIII. PROBLEMS OF SCHOOLS IN TRANSITION

In July 1955, a university seminar on intergroup relations for Kentucky educators and school board members facing desegregation considered the principal fears with which the white and Negro races viewed the problem of desegregation.[1]

The white people were said chiefly to be afraid (1) that their children might be taught by Negro teachers; (2) that school associations would result in undesirable social relationships attributable to the low standards of health, morals, and behavior of the Negro; and (3) that educational standards would suffer as a result of the substantially lower scholastic achievement of Negro pupils.

The main apprehensions of Negroes were said to be (1) that desegregation would be planned in the usual pattern of white supremacy, with the Negro being told what to do; (2) that white leaders would not work with the Negro leaders recognized as such by the rank and file, but only with the political leaders with whom they were accustomed to work; and (3) that Negro teachers would lose their jobs. The fear that Negro children would be abused by white teachers and pupils was not reported to be a primary fear of the Negro.

These principal fears of both races suggest the following problems:

(1) Can the constitutional requirement of racial nondiscrimination in school admission policies be met without lessening the quality in the educational program?

(2) What are the effects, good and bad, upon children immediately involved and upon society as a whole, of the admission of Negroes to white schools?

(3) Is the adjustment to a nondiscriminatory system eased by democratic participation of all segments of the population, including Negroes, in the planning and execution of a desegregation program?

The Commission's public education study, as stated previously, is predicated upon the assumption that the American system of public education should be preserved unimpaired during the process of adjustment. First consideration will, therefore, be given to the question of how desegregation has affected educational standards and achievement.

MUST QUALITY SUFFER?

Effect on scholastic achievement and standards

From their beginnings, public educational systems have been forced to adjust and reorganize to absorb new groups of children that were

[1] S.S.N., Aug. 1955, p. 20.

handicapped as compared with those whom the school already served. For example, there were the successive minority immigrant groups of various nationality, particularly in the period from 1900 to 1930, and the lower economic group that continued in school after States adopted compulsory attendance laws. A similar problem arose in many parts of the country when rural school children were brought into consolidated schools with children who had had superior educational opportunity in urban schools. Dr. John H. Fischer, Superintendent of the Schools of Baltimore, says:

> The problem of educating all of the children of all the people is not new. We [American educators] have been working at it for more than a century. Each time the doors of the schools have been opened without reservation to a larger group, the argument has been heard anew that this will ruin the schools and society as well. But somehow both continue to survive—as some of us believe, all the better for what has occurred.[2]

A San Antonio elementary teacher put it differently, "The process of enrolling in the same public school, children of different backgrounds has been going on in America since 1776. At least, the Negro student can speak English." [3]

It appears indisputable that large numbers of Negro pupils test lower in scholastic achievement and intelligence than white pupils do. It also appears to be established that as a total group there is no scientific evidence to prove the inherent superiority or inferiority of either the white or the Negro race. Exactly what intelligence tests measure is less clear. Some educators believe that such tests measure a child's absorption of middle-class white culture; others, verbal competence.[4] One distinguished scholar claims that both achievement tests and intelligence tests mainly measure academic attainment, and that academic attainment represents relationships between a pupil's endowment and his past home and community conditions.[5]

What these tests actually measure is of no importance here unless the results prove that the large number of Negro children with low scores are incapable of profiting by a better education, and that their admission to white schools would pull down the educational level and, eventually, the standards of those schools. The record to date, where such information is available, does not support either of these suppositions.

The records of big cities with large percentages of Negro pupils that have desegregated their dual school systems at all grade levels, establish the fact that the presence of large numbers of Negroes in formerly

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[2] John H. Fischer, "The New Task of Desegregation," *The Nation's Schools*, Sept. 1955, pp. 43, 45.

[3] Herbert Wey and John Corey, *Action Patterns in School Desegregation*, Bloomington, Ind., 1959, p. 212.

[4] Fischer, *op. cit. supra* note 2.

[5] A. D. Albright, "What Are Standards," S.S.N., June 1958, p. 1.

white schools does not lower educational standards. Furthermore, there is some evidence that the scholastic achievement of Negroes in such schools has improved, and no evidence of a resultant reduction in the achievement of white students.

These facts are pointed up by the experience in Washington, D.C., and Baltimore, Md., the two large cities that integrated their dual systems in 1954. Dr. Carl F. Hansen, the Superintendent of Schools in Washington, stated that the over-all standards of the school system have gone up since desegregation.[6] He further stated that such was the case even though the number of white pupils has decreased steadily. He cited this as proof of the educability of Negro pupils in spite of the substantial incidence of cultural and economic poverty of the group.[7]

An analysis of the recent performance of almost 8,000 Washington sixth graders on the Stanford Achievement Test showed that these pupils were at or above the national standards in five out of six subjects. Two years ago the sixth graders were below the national standards in all of the subject areas, and, last year they met the standard in only one subject.[8] However, these test results may be affected somewhat by the fact that efforts to improve the educational program have resulted in a substantial increase in the number of pupils receiving special attention in atypical classes—students not included statistically in the test group reported on.[9] This is normal testing procedure.

Dr. John H. Fischer, the Baltimore Superintendent of Schools, did not observe that putting Negro children in school with white children made any difference in school achievement. Rather, for both races, he saw a close correlation between cultural background and school achievement.[10] Dr. Fischer declared that "Desegregation has no more effect on academic standards than it has on the yardstick by which a pupil's height is measured." [11] On the positive side, desegregation has resulted in better educational opportunities for Negroes in Baltimore. With general efforts to improve the educational program, the opportunities for white children have also been increased.[12]

In Louisville, records of achievement by race have been kept for many years. A study, made after two years of desegregation experience, showed a substantial and statistically significant improvement

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[6] Nashville Conference, p. 60.

[7] Statement submitted to Commission, p. 8.

[8] S.S.N., May 1959, p. 4.

[9] There were 1,298 in Special Education classes of elementary schools in Oct. 1954; 2,801 in such classes in Oct. 1957.—Report, District School Department of General Research and Statistics, Office of the Statistician, Dec. 4, 1957.

[10] Nashville Conference, pp. 139–40, 188.

[11] *Id.* at 149.

[12] *Ibid.*

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in the academic achievement of Negro pupils, and a slight increase in the achievement of whites in desegregated schools.[13] Similar, but perhaps less marked, improvement was noted in the schools attended solely by members of each of the two races. Dr. Omer Carmichael, the Louisville Superintendent, attached significance to the improvement of Negro achievement and explained the improvement in all-Negro schools by saying that the Negro teachers were working to refute his expressed opinion that on the average, Negro teachers were not as competent as white.[14]

Dr. Ward I. Miller, the Wilmington Superintendent, also noted improvement in the performance of Negro children and in the over-all quality of education since desegregation.[15] He did not attribute this to desegregation but to a concentrated drive to improve the educational program all along the line. Dr. Carmichael agreed generally with this, but expressed the opinion that desegregation itself also helped the Negro pupil to raise his achievement.[16]

The principal of a desegregated school in Oklahoma City found that, although Negro pupils were concentrated in the lower ability groups, standards of achievement were maintained.[17] Dr. Melvin W. Barnes, the Superintendent in Oklahoma City, stated that while adjustments were required with increases in the number of Negro children in formerly all-white schools and in the total class size, the standards were kept high as incentive for Negro pupils to work toward and possibly attain higher educational achievements through desegregation.[18]

Similar reports were made from places other than the large cities. Reporting on the State of West Virginia as a whole, Dr. Rex M. Smith, Assistant State Superintendent of Schools, testified that, although records were not kept by race, there was no evidence that desegregation caused a drop in achievement. In fact, he said, there has been a normal rise in achievement from year to year.[19]

In both San Angelo, Tex., and Logan County, Ky., it was reported that Negro pupils at first had difficulty in maintaining the grade level achieved in segregated schools.[20] However, the Superintendent in San Angelo reported that after three years the scholastic record of Negro children has shown gradual improvement,[21] and the Logan County Superintendent stated that the Negro pupils now appeared

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[13] Nashville Conference, p. 154.
[14] *Id.* at 156.
[15] *Id.* at 74, 76, 77.
[16] *Id.* at 158.
[17] *Id.* at 98.
[18] *Id.* at 102.
[19] *Id.* at 120.
[20] *Id.* at 48, 182.
[21] *Id.* at 44.

to be doing a little better.[22] Neither superintendent reported a reduction in over-all standards or in the achievement of white pupils.

Similar reports were received from Hobbs, N.M., and Leavenworth, Kans. The Leavenworth Superintendent stated that their limited desegregation program had not harmed the educational programs in the formerly all-white schools,[23] and the Hobbs Superintendent reported that some Negro students appeared to be improving in the desegregated situation.[24]

The superintendents were unanimous in their observation that the achievement level of Negro children as a group was below that of the white children as a group. No one took exception to the view that this low level of achievement was closely related to a generally substandard cultural and economic background rather than to any racial factor.

It was Dr. Fischer's opinion that I. Q. comparisons would be on much sounder ground if white and Negro children with the same general cultural background were compared, rather than comparing all white children with all Negro children.[25] Dr. Carmichael noted that in Louisville such comparisons had indicated that there was substantially less difference between the two races.[26]

A less tangible factor that can make a substantial difference in the results of a comparison of white and Negro I. Q. and achievement was said by Dr. Fischer to be that of the deprivation of motivation that comes from our general social situation. The Negro child in our society knows that he does not have the same opportunity of rising to the top in his chosen occupation or profession as a white child, no matter how diligently he applies himself. This knowledge deprives him of ambition to do well scholastically.[27]

Granted then that the Negro child has generally shown less achievement in school, whatever the reason or reasons, how has this problem been met by school systems that have desegregated without a lowering of standards or achievement?

Meeting the educational problems

While it is obvious that the scope of the educational problem is largely determined by the number of children of both races who are brought together for the first time, the potential effect of desegregation is not often the actual effect. Many things can validly be done to limit the initial impact, even where there are substantial numbers

[22] *Id.* at 184.
[23] *Id.* at 24.
[24] *Id.* at 14.
[25] *Id.* at 188.
[26] *Ibid.*
[27] *Id.* at 188, 189.

of Negro children in the total school population. A plan for gradual desegregation or a pupil placement procedure are examples. Factors in our society and community life may work against realization of the full desegregation potential. Examples of this are patterns of residence which are often racial and a hesitancy on the part of persons of a minority group to seek admission to white schools when they have the opportunity.

In any event, many communities are meeting successfully the problems created by the unification of dual school systems. A number of the large cities that experienced substantial desegregation have utilized ability grouping in coping with the problem of differences in achievement level. This procedure was not in all cases adopted specifically to meet educational problems arising out of school desegregation, but it is apparently the unanimous opinion that it has been helpful.[28]

In Washington a "four-track" system was employed "in an effort to make it possible for every child under the desegregation process to get a maximum educational opportunity, [and] to make it clear that the gifted as well as the slow will be challenged at their maximum. . . ." The track system, it was said, offered reassurance that the mixing of Negroes and whites in the classroom would not impair the educational opportunity of anyone.[29] The program in Washington was at the high school level, but ability groupings were utilized in lower grades also. Negroes predominate in the lower achievement tracks in Washington, but there are a substantial number in the honors track too.[30]

Wilmington had utilized a system of ability grouping prior to school desegregation, but its system of three tracks has been revised since desegregation to meet the needs of the student body.[31] St. Louis after six years of study instituted a similar three-track system in the school year 1957–58. The following was stated as the reason for adopting the ability grouping plan:

> Great difficulty is being experienced in the secondary schools in the matter of counseling and directing students in the course patterns from which they can profit most. Students of low achievement are, in many instances, electing classes in which they cannot effectively do the standard work required. Students capable of superior achievement are sometimes electing course patterns which do not adequately challenge them.[32]

Kansas City, Mo., with a considerably smaller percentage of Negroes, began a pilot program in 1957 in a junior high school where

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[28] In relating these facts, the Commission is not advocating any position on the subject of ability grouping as such. It is recognized that educators differ on their soundness.

[29] Nashville Conference, p. 57.

[30] *Id.* at 61.

[31] See *Id.* at 74, 75, 77, 79.

[32] St. Louis Public Schools, *The Three Track Plan,* Jan. 1958, p. 3.

almost 100 percent of the students were Negroes. The purposes of the program were:

(1) To find ways of discovering pupils with superior potentiality.

(2) To identify causes of poor motivation among students with superior capabilities.

(3) To determine ways of adjusting the school program in order to help the superior students achieve more.

(4) To apply some of the known guidance techniques more intensively in order to test their effectiveness.

(5) To establish a method of operation that could be used in other schools.[33]

In 1954, a year before desegregation, San Angelo, Tex., began a three-track program in basic subjects. Mr. Wadzeck, the Superintendent, states that this program "has been an excellent instrument to provide for some of our slower Negro students but certainly no more so than to provide for our slower students of other races." [34] However, at the end of the first grading period in the first year of desegregation, it was found that many of the Negro students were in scholastic difficulty. As a consequence, free tutoring classes were offered at night for all high school students. More white students reported for this extra help than did Negro students, but the program was apparently effective because the grades of Negro pupils began to improve.[35]

Leavenworth, Kans., although it does not have a track system, has a program for academically talented children and a program of "ungraded English" in which children of low achievement are placed. The latter classes are overwhelmingly Negro.[36]

Maplewood, Mo., a suburb of St. Louis, had a three-track academic program in its high school during three years of desegregation, but school officials found it necessary to add a fourth composed of students whose reading level was sixth grade and below. The composition of this track was 98 percent Negro.[37]

In Austin, Tex., the school system was operating with eight or nine different grouping levels in various subjects in order to provide for the needs of Latin-American children. When desegregation of Negro schools occurred, no significant changes in the academic program had to be made.[38]

Other methods of adjusting the academic program have also been utilized. Obviously there is more opportunity for ability grouping

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[33] *S.S.N.*, March 1958, p. 15.
[34] Nashville Conference, p. 44.
[35] *Ibid.*
[36] *Id.* at 25.
[37] Wey and Corey, *op. cit. supra* note 3, at 219.
[38] *Id.* at 219, 220.

and curriculum adjustment in large cities and large school systems than in areas where the facilities, personnel, and finances are limited.[39]

Ungraded classrooms and the addition of courses, along both vocational and basic academic lines, help ease the educational problems created by the admission of substantial numbers of children with substandard achievement.[40]

The problems are not necessarily resolved by adjustments in the curriculum alone. Preparation of the teaching staff and of the pupils affected has generally been found to be a necessary part of the total program. Continuing teacher education and extensive pupil counseling may be required.

Perhaps the most extensive preparation of the teaching staff was conducted in Washington, D.C., prior to desegregation. The program of intergroup orientation and education for school personnel was begun informally in 1947. It became official in 1953 and was then increased in intensity.[41]

Teacher in-service training was a part of the preparation in Nashville, Tenn., and Logan County, Ky. Nashville had numerous conferences on the problem of desegregation, in which school personnel of both races took part. Human relations specialists were brought in to conduct an in-service training program.[42] Before any official announcement was made regarding desegregation in Logan County, anticipated local problems were discussed and analyzed in meetings of school personnel.[43]

In the summer of 1954, school principals and teachers of both races in Wilmington conducted an intensive program of home visitation to prepare and reassure the parents and children who would be affected by the desegregation plan. The Wilmington Superintendent cited this program as one of the chief factors in the smoothness of the transition.[44]

The principal of the formerly all-Negro high school in San Angelo, Tex., who was himself a Negro, was placed in the desegregated white high school as a counselor. Mr. Wadzeck, the Superintendent, felt that this counselor was an important feature of the school's adjustment.[45] This was also the experience in Lexington, Mo. "One of the best moves we made," said the Superintendent, "was to use the former Negro principal as a part-time counselor for Negro students. He has been extremely valuable in this capacity." [46]

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[39] See James B. Conant, *The American High School Today* (1959), 77.
[40] *Id.* at 223, 224.
[41] Nashville Conference, pp. 54–55.
[42] *Id.* at 88.
[43] *Id.* at 181.
[44] *Id.* at 73.
[45] *Id.* at 53.
[46] Wey and Corey, *op. cit. supra* note 3, at 224.

In the period between the 1954 and 1955 decisions of the U.S. Supreme Court in the *School Segregation Cases*, the school administration of Louisville engaged in a program of intensive preparation for pupils, teachers, and community prior to the formulation or announcement of desegregation plans. Every teacher was asked to work with her pupils so that they would "be ready to meet all other children more than halfway" when desegregation occurred.[47] The strength of the program here was evinced when an opposition group, with John Kasper as speaker, failed to secure any substantial response.[48]

No rush to enter white schools

Under the system of enforced racial segregation in public schools, educational opportunities in Negro schools were, in general, inferior to those in the white schools. This condition could have caused large numbers of Negro pupils immediately to seek admission to formerly all-white schools following the Supreme Court decision. The fact that this rush has not occurred has simplified some of the educational problems that many communities anticipated when they formulated desegregation plans.

Where the plan adopted gives the Negro pupils or the parents the option to remain in or transfer to all-Negro or predominantly Negro schools, the evidence shows that this option is exercised in a high percentage of cases.

Some form of option for one or both of the races has been a feature of most desegregation programs. Such options provide a "safety valve" and reflect the general feeling among school people that within the physical limitations of the school system itself, no child shall be forced into either a segregated or desegregated situation.

The plans or method of desegregation under which Negro parents or pupils may have some measure of choice may be classified in general as follows:

(1) A Negro child must apply to a white school, but academic and other criteria including the proximity of residence are considered in determining admission.[49]

(2) A Negro child must apply to a white school and normally will be admitted unless the school is overcrowded or is not convenient to the child's residence.[50]

(3) A Negro child may apply for admission to any school in the system and will normally be admitted if the school is not overcrowded.[51]

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[47] Nashville Conference, 152.

[48] *Id.* at 156–57.

[49] E.g., communities of North Carolina and Virginia utilizing provisions of pupil placement laws or plans.

[50] E.g., counties of Maryland and Kentucky; also Muskogee, Okla.

[51] Baltimore, Md.

(4) A Negro child is assigned regardless of race to the school designated to serve a defined attendance area, and he must apply for a transfer to another school if he wants one.[52]

Examples of the reaction of Negro parents and pupils to the choice afforded under the requirements of the first of these classifications, and the effect of the criteria for admission, can be found in the experience of Charlotte and Greensboro, N.C.

In Charlotte, 40 applications to enter formerly all-white schools were received in 1957, the first year of desegregation, from a total Negro student body of about 10,500. After much study, five of the applications were approved and the rest rejected.

Greensboro did not subject applications to the intensive screening criteria used in Charlotte, but simply considered where the applicant would be placed if he were white and similarly qualified. However, only nine applications were received from a Negro student body of 5,607, and six of the nine were approved. Twenty white students requested and received transfers to avoid the desegregation situation.[53] Two of the six Negro children admitted to white schools in Greensboro asked for transfers back to Negro schools the next year.[54]

After four years of desegregation in Muskogee, Okla., the number of Negroes in formerly all-white schools has only increased from 1.25 percent of the total Negro enrollment to 1.5 percent.[55] Muskogee's method of desegregation fell into the second of the above categories, but due to the pattern of residential segregation, as well as to the location of the Negro schools and the crowded conditions in the white schools, few Negro pupils were eligible for admittance and few of these applied. Of the 23 who sought admission the first year, 22 were accepted.[56] The paucity of applications for admission to white schools here has been attributed to the facilities and educational programs that had been established for Negroes prior to 1954.[57]

In eight rural counties of Maryland, the plan or method of desegregation was also to admit Negro applicants to white schools in cases where the white school was more convenient to their residence. After several years of this policy, only one application was received in these eight counties.[58]

The experience of Baltimore, Md., the only clear-cut example of a free-choice admission policy with no school attendance areas, was that very little movement took place from one school to another.[59] Dr.

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[52] E.g., Washington, D.C. and Wilmington, Del.
[53] Wey and Corey, *op. cit. supra* note 3, at 123, 124; Commission Questionnaire.
[54] Nashville Conference, pp. 106–107.
[55] Nashville Conference, p. 39.
[56] *Id.* at 31.
[57] *Id.* at 39–40.
[58] Commission Questionnaires.
[59] Nashville Conference, p. 144.

Thomas G. Pullen, the Maryland State Superintendent of Schools, cited the two State teachers' colleges in or near Baltimore, one white and one colored. The Negro population chose to support and thus keep open the small Negro teachers' college rather than apply for admission to the white school. Some Negro students have entered the former white school, but most prefer the Negro college.[60]

This desire to keep the Negro school has been manifested in other communities. Concern over the fact that Negro teachers would lose their jobs has at times been a factor in this. Concerted efforts on the part of Negro leaders and organizations to influence Negro parents and children not to seek admission to white schools, and thus to keep open the Negro school, are reported to have been effective in Burnett and Seguin, Tex., and in Poplar Bluff, Mo.[61] In Poplar Bluff, the campaign was so effective that no Negro child applied for transfer to the white school. In Seguin the reasons given by Negro leaders for the effort were the desire to retain the Negro teachers and to keep open an opportunity to raise standards among their own people.[62]

Louisville, Ky., redistricted its school system and desegregated at all grade levels in 1956. Here 45 percent of the Negro children who, because of residence, were assigned to what had been white schools, immediately requested transfer back to the former Negro schools. Some 85 percent of the white children who by residence were in the district of former Negro schools requested transfer to white schools. Before school opened, more in each category requested transfer, probably due to the great deal of publicity given a number of major desegregation incidents that were in the news at the time.[63]

Perhaps the most striking example of the tendency of Negro children to transfer back to Negro schools is found in Nashville, Tenn. The city was following a grade-a-year plan, and after redistricting, 115 Negro children eligible for first grade in 1957 resided in "white" school zones. Of these, 105 asked for transfers to the Negro schools. The pattern was about the same the second year of desegregation.[64] The parents of one Negro girl who had attended the former white school the first year asked that she be transferred back because they thought that she could do more with her talents for leadership among her own race.[65]

In San Angelo, Tex., a feature of the plan was to permit a child to transfer from a school in which his race was a minority to one where it predominated. This policy was adopted after Negro leaders

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[60] *Id.* at 146.

[61] Wey and Corey, *op. cit. supra* note 3, at 143. See also the Findings of Fact in Jefferson v. McCart, Civ. No. 4532, E.D. Okla., Oct. 10, 1958, 3 *Race Rel. L. Rep.* 1154 (1958).

[62] Wey and Corey, *op. cit. supra* note 3, at 143.

[63] Nashville Conference, p. 158.

[64] *Id.* at 91, 92.

[65] *Id.* at 92.

expressed concern over the fact that small numbers of Negro children would be forced to attend white schools as a result of the districting plan. About 50 percent of the Negro children who were affected requested transfer back to elementary schools that were predominantly Negro.[66] Mr. Wadzeck, the Superintendent, pointed out that it was the tendency of Negroes who had long lived in the area to request such transfers, whereas children of Negroes from the North, who were connected with the nearby air base, usually attended the school that served their residential area, even though it was predominantly white.[67]

Dr. Hugh Bryan, Superintendent of Schools at Leavenworth, Kans., reported similar experiences. Because of overcrowding, it became necessary to move the eighth grade out of one of the Negro elementary schools. Parents of the children involved were given the choice of sending them to a nearby white school or to another Negro elementary school which was farther away. More than half of the parents elected to have their children transferred to the all-Negro school.[68]

Wilmington, Del., retained its long established open-door transfer policy with the advent of desegregation, but requests from Negro children to transfer to white schools have not been as great as was anticipated.[69]

In Talbot County, Md., the number of new Negro applicants to white schools has not kept pace with the number of Negro children transferring back to Negro schools. The result is that in the third year of desegregation there were seven Negro children in desegregated schools compared with twelve which were originally admitted in 1956.[70]

In summary then, the educational problems of a school district that implements a desegregation program may be considerably less than anticipated under any plan that gives Negro parents and children the opportunity of either remaining in the Negro school or transferring to a school in which the Negro race predominates.

COMMUNITY PARTICIPATION IN PLANNING

Will it work; does it help?

A fear of the Negro community has been that white community leaders would ignore responsible Negro members of the community when formulating desegregation plans. White leaders, on the other hand, have often been apprehensive about becoming involved with

[66] *Id.* at 42, 43.
[67] *Id.* at 52.
[68] *Id.* at 23, 26.
[69] *Id.* at 73.
[70] *Id.* at 169.

militant Negroes and thus jeopardizing community acceptance of *any* desegregation plan. More often than not, responsible local Negro leadership has been carefully consulted and involved in the planning and preparation, and experience to date indicates this procedure has eased the problems of transition.

There is some difference of opinion even regarding the advisability of preparing the community before undertaking a desegregation program. Baltimore is the prime example of successful implementation of total desegregation without such preparation. On the other hand, the failure of the attempt in Milford, Del., is generally attributed to lack of community preparation.[71] Advocates of less publicity and community discussion have felt that it is better to act before opposition has had a chance to organize.

In any event, the necessity for, and the extent of, community preparation and orientation must be determined by local conditions. Community participation in the development of a plan does not insure a smooth transition, as the experiences of Nashville and Clinton, Tenn., and Greenbrier County, W. Va., indicate. Often other factors are present in the community that upset the most carefully laid plans.[72] Then, too, it takes only one malcontent with a stick of dynamite to cause major destruction and disrupt a desegregation program.

It can be said that where all elements of the community are given an opportunity to be heard in the development of the program, and where the community is kept fully informed of all steps taken, the chances for a smooth transition are much greater than where this has not been done.

In two States, Maryland and Kentucky, action at the State level led to the creation of biracial study groups in all school districts maintaining separate schools. In Maryland, a committee of county school superintendents recommended that each county board of education appoint a biracial advisory committee on desegregation. All counties did so.[73]

The Kentucky State Board of Education in the summer of 1955 adopted a resolution having the effect of law,[74] which recommended to school superintendents the appointment of desegregation study groups in every community. Apparently this resulted in the establishment of biracial committees. A 1955–56 school-year report stated that, in addition to districts already desegregated, biracial citizens' committees (with about 25 percent Negro membership) had been appointed by local boards of education in 60 districts and were working on desegregation plans.[75]

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[71] Wey and Corey, *op. cit. supra* note 3, at 3.
[72] *Id.* at 3 and 4.
[73] *State Board of Education of Maryland, 89th Annual Report,* p. 80 (1955).
[74] S.S.N., July 1955, p. 8.
[75] *Kentucky State Department of Education, Report on Integration* (1955).

The biracial committee appointed in Talbot County, Md., recommended that applications of Negro pupils to enter the first three grades be accepted in September, 1956. The recommendation of the committee was adopted by the School Board as its desegregation policy and it was widely publicized.[76] Although there was much adverse reaction at the time schools opened and later, the biracial committee stood firmly and unanimously in support of the desegregation policy.[77]

The use of biracial committees of citizens in the Maryland counties has resulted in the adoption of at least a policy of desegregation in all counties. There has been no rush of Negro pupils to enter white schools. Although outside of Baltimore only 8.5 percent of the State's Negro school population is in desegregated schools, litigation has occurred in only three counties.[78]

The plan of desegregation for Louisville, Ky., was carefully worked out with the aid of both white and Negro citizens. Dr. Omer Carmichael, the Superintendent, considers that the most important thing is for the community to have a sense of identification with the program.[79]

In Logan County, Ky., the citizens' committee consisted of ten white and four Negro members, roughly the population ratio of the races. The first recommendation made by this committee was that an intensive program be undertaken to prepare the community. This was done. Later the committee held open meetings at which all who wished to be heard had the opportunity. Three alternative recommendations were made to the Board of Education. After careful study, one was adopted as the county's desegregation plan.[80]

In Hazard, Ky., the committee consisted of six whites, including the Superintendent, and four Negroes. All school districts were represented, and there was wide occupational diversity. One of the Negro members shined shoes, another was a minister, but all were selected because of their reputation for good judgment and tact and for the respect they enjoyed among their own race. The plan submitted to the Board of Education was adopted. The first plan suggested by the Negro minister would have required more time for completion than the one finally submitted by the committee.[81]

In some localities, the biracial committee has remained anonymous. Such was the case in Mayfield, Ky., where an effort was made to get

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[76] Nashville Conference, p. 167.

[77] *Id.* at 169.

[78] St. Mary's County and Harford County; and Charles County, where the precise issue was school bus desegregation.

[79] Nashville Conference, pp. 152, 156.

[80] *Id.* at 180–82.

[81] Wey and Corey, *op. cit. supra* note 3, at 129, 130.

members who were neither strongly for nor against desegregation. In Owensboro, Ky., one member of each race who strongly opposed desegregation was purposely selected.[82]

Hot Springs, Ark., used a biracial committee to develop its plan and to help in the rezoning of the city for a desegregated school system. The committee, with the Board of Education, agreed that the first step in desegregation would occur in a special class in auto mechanics.[83]

Other communities consulted with Negro citizens to hear their recommendations and answer their questions, instead of forming biracial advisory committees as such. The School Board of San Angelo, Tex., was one that chose to consult with individuals rather than organizations in developing its plans. Twenty leading Negro citizens were invited to meet with the Board and submit their recommendations. Not all of them favored desegregation, and the Negro leaders were concerned over the possibility of small numbers of Negro students being forced into white schools. This led to the adoption of a plan under which any pupil could transfer to a school where his race predominated.[84]

In Wilmington, Del., public hearings were held, at which all citizens and organizations were invited to voice their opinions regarding plans for desegregation. Dr. Ward I. Miller, the Superintendent, has acknowledged the valuable contribution made by the Negro member of that Board in planning the program in the school system and in appraising the problems of the future.[85]

As early as 1952, the Board of Education in the District of Columbia invited citizens to submit written suggestions as to how desegregation should be effected.[86] Later the Board held a public hearing on the questions and problems involved.[87]

SUMMARY

Many communities have availed themselves of the thoughts, energies, and talents of members of the Negro population in the formulation of desegregation plans and in the process of preparing the community for the transition. Often, biracial committees were appointed by the local school board or other governing body to study the problems of school desegregation in the community and to make recommendations. In other instances, selected leaders of the Negro community were consulted and asked for recommendations. In still

[82] *Id.* at 131, 132.
[83] *Id.* at 130.
[84] Nashville Conference, pp. 42, 43.
[85] *Id.* at 72, 73, 75, 76.
[86] *Id.* at 55.
[87] Wey and Corey, *op. cit. supra* note 3, at 133.

other cases, the community at large was given an opportunity to be heard.

Generally speaking, the fear on the part of Negroes that their responsible leadership would be precluded from making a contribution to the solution of the problem has not materialized. The localities where suits have been filed or where State law or leadership has made the position of local authority extremely difficult, are more often the ones where members of the Negro community have not participated in the search for solutions, rather than the ones that have proceeded on a more or less voluntary basis.

Where community participation has been utilized, the transition has usually been made without significant difficulty. Furthermore, few of these communities have been involved in subsequent litigation. Gaining the acceptance and confidence of the Negro community as well as the white has proved an important factor in reducing community tension.

Another fact that can be gleaned from the experience of these communities is that Negro leadership has been sympathetic and understanding regarding the problems involved for both races. The result has been that moderate and, at times, extremely cautious plans were developed, which more easily secured general community acceptance.

EFFECTS OTHER THAN EDUCATIONAL

School administration

In some communities both large and small, desegregation has been the solution to wastefulness and inefficiency inherent in a dual organization. This was the case in Washington, D.C., where a school for Negro children might be grossly overcrowded while a nearby white school would be operating at perhaps half capacity. Just before desegregation, Washington's Negro schools were at 107.9 percent of capacity and the white ones at only 77.7 percent.[88]

In regions where the Negro population is small, desegregation has permitted the closing of small, expensive, and often inadequate Negro schools and the transferring of their pupils to existing white schools. Oklahoma school districts, for example, abolished a total of 163 schools through integration in four years, 1954–58.[89] It has been estimated that a yearly saving of at least $750,000 resulted.[90] West Virginia reported that in five years of desegregation, Negro high schools had been reduced from 34 to 17 and junior high schools from 8 to 4. There

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[88] See Public Schools of the District of Columbia, Office of the Statistician, *Capacity of each Building, Pupil Membership and Pupil-Teacher Ratio, By Schools as of October 23, 1953.*

[89] Oklahoma State Department of Public Instruction, *Compilation of Integration Questionnaires*, as of Nov. 12, 1958.

[90] S.S.N., Nov. 1958, p. 9.

was a comparable though less dramatic reduction in elementary schools. Definite savings through the elimination of schools and bus runs was reported.[91]

In many places, however, proper and efficient use of existing facilities may not easily be achieved. Superintendent Hugh Bryan found this to be the case in Leavenworth, Kans.[92] He surmised, however, that a more extensive program than is in effect there, including the integration of teachers, would result in substantial savings.[93]

In many rural areas, especially where the Negro percentage is small, two or more districts have sent their Negro children to a single school.[94] Joint financing of the school and joint transportation has been worked out. School districts that can absorb their small Negro school population into existing white facilities may effect substantial savings.[95] But where white schools are already crowded, substantial capital outlay may be needed to furnish desegregated facilities within the school district. Furthermore, these schools usually have no alternative to complete integration, and the financing of additional facilities may contribute to greater community opposition than is encountered in localities able to enjoy greater flexibility.

Morals and discipline

Special problems arise from the general belief that the introduction of Negroes to white schools will lower the standards of morality and behavior of the white pupils and expose them to greater health hazards. Evidence presented by school officials indicates that this is true only to the extent that the Negroes may come from families on a lower cultural and economic level. Race, as such, is not a factor in these standards. White children deprived similarly as to background present quite similar problems. But in actual practice, these aspects of desegregation have not proved to be as important as many school administrators expected. The following testimony of educators who have recently had experience in desegregation is pertinent:

> A big fear of parents and teachers of both races is that desegregation in the South will splash waves of new problems in discipline, health, truancy, morals, and student acceptance of each other. Such has not been the case. Student problems are essentially the same; they are only accentuated by desegregation. In fact, school leaders and teachers in many school districts who anticipated student problems due to race were pleasantly surprised when none developed. * * * Reports reveal that behavioral problems among underprivileged Negroes are alarming, but white teachers and principals who have worked with deprived white children readily realize that the problems are similar.[96]

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[91] Nashville Conference, pp. 117, 120.

[92] *Id.* at 28.

[93] *Id.* at 66–67.

[94] See Nashville Conference, pp. 180, 182 for an example of such a situation (Logan County, Ky.).

[95] See S.S.N., Sept. 1954, p. 2 for examples of savings in two Arkansas school districts.

[96] From Wey and Corey, *op. cit. supra* note 3, at 233.

As a result of desegregation, discipline cases increase, but nearly always these infringements are committed by the same students who were guilty of improper acts before desegregation. Often the troublemakers use desegregation as an excuse to continue malicious acts at which they have been caught before.[97]

Dr. Omer Carmichael, the Louisville Superintendent, stated that in his desegregated schools there had been somewhat greater difficulty in matters of discipline, due more to the emotional reaction to desegregation than anything else, but that it had been substantially less than he had feared.[98]

In the Baltimore schools, Dr. John H. Fischer, the Superintendent, has found no problems attributable to race as such.[99] In a statement submitted to the Commission, he said:

. . . no Negro child has ever brought into any of our schools a problem that had not already been presented somewhere by a white child. Nor has any white child been able to claim much originality for his race in inventing new forms of misbehavior. We find that these are a function of the child's total life-situation and are always due to a number of factors. It is never possible to explain a child's behavior simply in terms of his race, or to classify children's problems on a racial basis.[1]

Dr. Hansen, Superintendent of the Washington Schools, reports very little increase in difficulties attributable to integration exclusively, and that, in fact, the incidence of severe problem cases appears to be subsiding.[2]

A principal of a desegregated junior high school in Oklahoma City stated that the Negro children did present different problems of discipline but that they were not due to the fact that they were Negroes but to various factors of deprivation. He did not believe that the problems were greater than they had been before the schools were desegregated.[3]

Concerning certain other aspects of the desegregation process, the Superintendent of Schools in Logan County, Ky., Mr. R. B. Piper, stated:

Integration has many problems in day-to-day school life. Rest room problems, cafeteria problems, and playground problems of a minor nature occur. We attempt to handle these problems as if only one race were involved, and to settle them firmly and promptly. Integrated transportation has its special problems; seating must be carefully arranged with consideration of age and sex. The overcrowded school bus will cause more trouble than an overcrowded classroom.[4]

The status of desegregation in Kentucky and Maryland in regard to various facilities and functions outside the classroom is shown in the following table, compiled from Commission questionnaires:

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[97] *Id.* at 237.
[98] Nashville Conference, p. 155.
[99] *Id.* at 140.
[1] *Id.* at 150.
[2] Nashville Conference, p. 58.
[3] *Id.* at 99.
[4] *Id.* at 183.

	Kentucky (Out of 64 school districts reporting) Desegregated	Maryland (Out of 15 school districts reporting) Desegregated
School Bus	72 percent	80 percent
Lunchroom	100 percent	80 percent
Playground	100 percent	80 percent
Athletic Program	100 percent	80 percent
Academic & Special Interest Clubs	91 percent	73 percent
Social Program	77 percent	67 percent

Mr. Piper indicated that in Logan County, Negro participation in school athletics had worked out well. Several schools had refused to play the integrated Logan County teams in 1956, but by 1958 there were no such refusals. The seating of spectators did not cause difficulty. No attempt was made to segregate the races.[5] The experience of this Kentucky community in regard to integrated school athletics is typical of what has occurred in many other desegregated school systems. Actually, the acceptance of the Negro athlete has often been the real "ice-breaker" both for the school and for the community.

A serious administrative problem, about which there is much community concern, relates to school social activities. In Logan County it was felt necessary to curtail these. School trips have continued, but no Negro pupils have elected thus far to go on them.[6]

On the other hand, most of the big city systems did not curtail social activities. Dr. Ward I. Miller of Wilmington reports that in the junior and senior high schools the Negro students dance and play together on these occasions without mixing with the whites.[7]

Desegregation has resulted in little social loss in the Washington schools. However, because of increased emphasis on the academic program, school authorities have stressed the desirability of curbing social activities that might encroach upon it.[8] Dr. Hansen further stated that the mores of the community discourage dating between white and Negro youth, and that social functions have not led to romantic attachments between the races. There is only one known case in the city in which a biracial marriage occurred between pupils who had attended the same school.[9]

The social situation in the schools of Pinal County, Ariz., were described by Miss Mary C. O'Brien, School Superintendent, at the Commission's Nashville Conference in March, 1959:

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[5] *Id.* at 183.
[6] *Ibid.*
[7] Nashville Conference, p. 75.
[8] Statement submitted to Commission by the Superintendent, p. 12.
[9] Nashville Conference, p. 59.

I contacted before I came here all of the principals of our high schools regarding any social problems that might exist in the high schools, and it was the consensus of opinion that they are working out for themselves. The Negroes invite Negro partners to the proms, banquets, and so on, and so far there have been no serious incidents in the county.[10]

The report of Dr. David M. Green, Superintendent of Schools in Dover, Del., was to the same effect.[11]

Desegregation has resulted in the curtailment of social and other activities in some desegregated school districts, but normal programs have been maintained in most, with the school personnel being especially vigilant to identify and take action on minor incidents before they can develop into major problems.

A few instances have been reported of Negro boys attempting to dance with white girls and of white girls seeking the attention of Negro boys, but prompt action on the part of school officials or by other students has usually resolved the problem without further difficulty.[12] An apparently successful method of avoiding racial incidents in school activities which has often been used at the high school and junior high school level is frank discussion of the problems and implications by school authorities with the students.[13]

Higher drop-out rate

The rate at which desegregated Negro students discontinue school in junior high school and high school has caused concern. Opinions differ as to the extent to which desegregation may have influenced this. Wey and Corey conclude that the drop-out rate, though always high, tends to increase in a desegregated school, at least for the first two or three years. Inability to do the work and a feeling of inferiority are given as reasons for this increase. Factors that would not seem to be affected by desegregation include the need of being at home to care for younger brothers and sisters, and the need to contribute to the income.[14]

From San Marcos, Tex., it was reported that although the over-all high school enrollment was increasing, the Negro enrollment had dropped from 56 to 29 since the beginning of desegregation. Inferior academic background and lack of parental interest in keeping the children in school were offered in explanation of the decrease.[15] Mr. Piper, the Superintenent in Logan County, Ky., reported that about half of the Negro pupils were dropping out of school between the ninth and the twelfth grades, but that this was also the problem in segregated

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[10] *Id.* at 172.
[11] *Id.* at 161.
[12] See Wey and Corey, *op. cit. supra* note 3, at 250, 251.
[13] *Id.* at 248.
[14] *Id.* at 241–42.
[15] *Id.* at 242.

schools. A further source of concern was that the tendency to leave was noted not only among the poorer students but among some of the best.[16]

In Wilmington, there has been a very great percentage of drop-out among Negro high school students. Attempts are being made to keep them in school by offering diversified occupational courses, including business education and trade and industrial programs, and by developing a system of cooperative employment for students. The number of students retained is increasing.[17]

Resegregation

Yet another administrative problem that is tied closely to the community itself is that of *re*segregation. The term is used to describe the tendency of a school or school system, after an initial period of desegregation, to become more, rather than less, segregated.

Resegregation is more often found in large city school systems and is, of course, closely connected with population trends and residential patterns. It is difficult to determine whether it represents a reaction to desegregation or whether it is merely an aspect of population shifts in which racial groups, through choice or because of limited mobility, tend to gather in racially segregated neighborhoods.

Most large cities are experiencing a rapid increase in non-white population. At the same time, white families are moving to suburban areas in increasing numbers. The percentage of Negro pupils in the Washington school system jumped from 50.7 percent to 1950 to 74.1 percent in 1958. It is the opinion of Dr. Hansen, the School Superintendent, that the exodus of white families from the city may be partly attributed to desegregation, but the trend started long before the schools were desegregated.[18] Other cities have experienced a similar trend.

In October, 1958, Dr. Hansen reported that the enrollment in 106 of Washington's 128 elementary schools was from 80 to 100 percent Negro or white, and that racial balance in enrollment, if it occurs, does not last long.[19]

This has been the experience in Baltimore and Wilmington.[20] Oklahoma City has also seen very rapid changes in the School populations from all-white to all-Negro or predominantly Negro.[21]

Since the benefits of school desegregation cannot be ensured by a program of pupil desegregation alone, Dr. Hansen suggests that much

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[16] *Id.* at 184.
[17] *Id.* at 76.
[18] *Id.* at 56, 57, 62.
[19] *Id.* at 57.
[20] Baltimore: Statement by the Superintendent of Schools submitted to the Commission; Wilmington: Nashville Conference, p. 75.
[21] *Id.* at 101.

can be gained by setting up intergroup faculties, by establishing and following a common curriculum, and by observing the same cultural and academic standards in all schools whatever their racial composition.[22] Whatever the solution may be, it is certain that the tendency of a school system to resegregate after initial desegregation presents manifold problems for the school administrator.

Harassment and intimidation

One of the most tragic aspects of school desegregation has been the vicious and irresponsible attacks directed against school board members, superintendents, and other school personnel. Often they have been directly under court order, subject to contempt proceedings for non-compliance; yet factions of the community have continued to heap abuse upon them. At times they have been left without the support of State or local leadership—even without adequate police protection. Caught up in the clash between State and Federal authority, they have been subject to conflicting orders of courts and administrative bodies as well as in legislative and executive directives.

Pressures have taken many forms—threatening letters and telephone calls, verbal abuse at meetings and on the street, economic boycott, and even physical attack. Dedicated and experienced school people have been forced to leave their jobs. School board members with many years of non-remunerative service to their community have been forced to resign. Too often the primary goal and duty of education has been lost in the issue of segregation.

It has generally been true that these pressures have been brought to bear most often and with most telling effect in the smaller and more rural communities, where law enforcement facilities may be inadequate for the task of policing a major disturbance. Then too, local police may themselves be reluctant to take action that would identify them with desegregation. In the small community, school officials and school board members are vulnerable to more immediate and direct community pressures.

The former principal of the high school at Clinton in Anderson County, Tenn., stated that the purpose of the intimidation was to "destroy the mental and physical health and stamina of persons in leadership roles."[23] In analyzing the position of school officials, he said, "School people are figuratively caught in the jaws of a vise comprised of legal contradictions, public opinion, and professional welfare."[24]

At an official school board meeting in the community of Springer, Okla., six patrons appeared and vigorously protested the desegrega-

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[22] *Id.* at 57.
[23] Wey and Corey, *op. cit. supra* note 3, at 167.
[24] *Ibid.*

tion of the school. Two board members were attacked physically, with the result that one sustained a deep cut that required stitches and the other was hospitalized for nine days with a brain concussion.[25]

A number of instances have been reported in which school boards have announced desegregation plans and then been forced by community pressures to reverse themselves.[26] Milford, Del., and Greenbrier County, W. Va., Negro children, after being admitted to school, were forced by community pressure to withdraw. School board members and school officials were forced to resign in Little Rock and in Milton, Del.

The School Superintendent of Nashville, Tenn., presented the following summary to the Commission at its Nashville Conference.

> Since Nashville began to grapple with the problem of desegregation, our most able Superintendent has retired in broken health, his eyesight greatly impaired by pernicious anemia. He was old enough to retire, but he should have been able to retire in good health. The Chairman of our Board of Education, a truly great lady, has suffered a severe heart attack, from which she cannot be expected ever fully to recover, and has had to resign from the Board of Education a year before the expiration of her term of office; and the Chairman of the Instruction Committee, who probably felt more heavily than anyone else the weight of this tremendous problem, has died. Many others among us, including principals, teachers, and other Board members, have suffered in lesser ways, but the memory of long hours of labor, followed by almost sleepless nights, disturbed and harassed by insults and threats by mail, by telephone and in person, remind us that it has not been easy or pleasant.[27]

In Greensboro, N.C., there were anonymous letters and telephone calls, products were delivered to the School Superintendent that he had not ordered, a cross was burned in his yard, and on four occasions missiles were thrown through his front window.[28]

The story with which the nation is most familiar is that of the greatly disturbed city of Little Rock, Ark. It contains all of the elements of the abuse, all the tribulations to which school board members have been exposed. The details may be found in the testimony of the Superintendent and other school officials as set forth in the 1958 opinions of the Federal District Court and the Court of Appeals.[29] The back drop for this harassment is given in the petition of Little Rock's Board for *certiorari* to the Supreme Court of the State:

> The legislative, executive, and judicial departments of the State government opposed the desegregation of the Little Rock schools, by enacting laws, calling

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[25] S.S.N., Sept. 15, 1958, p. 15.
[26] E.g. Sheridan, Ark.; Milton, Del.; Chattanooga, Tenn.
[27] Nashville Conference, p. 86.
[28] *Id.* at 107, 108.
[29] Aaron v. Cooper, 163 F. Supp. 13 (E.D. Ark., 1958), rev'd, 257 F. 2d 33 (8th Cir. 1958).

out troops, making statements vilifying Federal law and Federal courts, and failing to utilize State law enforcement agencies and judicial processes to maintain public peace.[30]

Mr. Virgil T. Blossom, the former Superintendent of Schools in Little Rock, has recently related some of these disturbing events.[31]

Strong leadership by school officials is necessary to the success of a desegregation program. But these officials cannot be left to stand alone. Where State and local government officials and law enforcement bodies stand firmly with the school authorities and make it clear to all that the law must be obeyed and the public peace kept, a relatively smooth transition has usually been effected.

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[30] Cooper v. Aaron, 358 U.S. 1, 15 (1958).

[31] *It Has Happened Here,* Harper and Bros., 1959.

CHAPTER IX. AN EVALUATION OF THE PAST AND APPRAISAL OF THE FUTURE

THE RECORD TO DATE

In the five years since the Supreme Court decision, programs to eliminate racial discrimination in public schools have been started in eleven segregating States and the District of Columbia. These States include eight classified in Chapter III as States in which the adjustment was expected to be easiest because of the comparatively small proportion of Negroes in the population. The other three are States in which a higher percentage of Negroes indicated greater difficulty. Five of the six States in which no action occurred were classified in Chapter III as States in which the adjustment to a nondiscriminatory system would be the most difficult, and the sixth was considered to be only slightly less difficult.

As a quantitative measure, a school district rather than the State is the significant yardstick. School districts may differ in area proportionately as much as Rhode Island differs from Alaska, and in population as much as Nevada differs from New York. Nevertheless, school districts are the agents of the States that operate public schools and, therefore, are the appropriate units for appraising the status of schools.

In the 17 segregating states there are reported to be 8692 school districts, 2907 of which have both white and Negro pupils. Ninety-five percent of the school districts having pupils of only one race are located in Missouri, Oklahoma, and Texas—states characterized by a multiplicity of small school districts, some of them with only one school, and a proportionately small Negro population concentrated in one part of the State. Not all of the 5785 districts enrolling only one race are white districts; some are Negro.[1] Although the school districting system in many States is by county units[2] or by county and city units,[3] districting without regard to political subdivisions is a complicating problem in some States.

Table 18, on the following page, shows the desegregation record to May, 1959.

This table shows that some action to implement the Supreme Court decision has been taken in all of the biracial school districts of Maryland and West Virginia, in almost 90 percent of them in Oklahoma and Missouri, and in 70 percent in Kentucky. In Delaware 25 percent and in Texas 17 percent of the biracial school districts have

[1] E.g., 125 Texas; 12 in Arkansas; 39 in Delaware. Both Missouri and Oklahoma have such districts but the exact number is not known.

[2] E.g., Maryland and West Virginia.

[3] E.g., Kentucky and Tennessee.

TABLE 18.—*Progress in desegregation of school districts, 1954–59* [1]

	Total number of school districts, 1958–59	Number having both white and Negro pupils 1958–59	Number of districts newly desegregated in the school year beginning September—					Total desegregated, May 1959	Number desegregated by court order	Number segregated, May 1959
			1954	1955	1956	1957	1958			
Alabama	113	113	0	0	0	0	0	0	0	113
Arkansas	423	228	2	2	1	4	0	9	1	219
Delaware	97	57	13	0	1	0	0	14	2	43
District of Columbia	1	1	1	----	----	----	----	1	0	0
Florida	67	67	0	0	0	0	0	0	0	67
Georgia	200	198	0	0	0	0	0	0	0	198
Kentucky	215	175	0	37	71	8	7	[2] 123	7	52
Louisiana	67	67	0	0	0	0	0	0	0	67
Maryland	24	23	1	8	11	3	0	[3] 23	2	0
Mississippi	151	151	0	0	0	0	0	0	0	151
Missouri	3,600	243	114	39	40	16	2	211	0	33
North Carolina	172	172	0	0	0	3	1	4	0	168
Oklahoma	1,469	271	0	124	70	22	22	238	4	33
South Carolina	107	107	0	0	0	0	0	0	0	107
Tennessee	152	141	0	1	1	1	0	3	2	138
Texas	1,650	722	1	73	48	1	1	124	0	598
Virginia	129	128	0	0	0	0	4	4	4	124
West Virginia	55	43	22	13	5	3	0	43	4	0
Total	8,692	2,907	154	297	248	61	37	797	26	2,111
Number acting under court order, by years	----	----	[4] 2	[5] 3	[6] 4	[7] 9	[8] 9	----	----	----

[1] The figures for total number of school districts and number having both white and Negro pupils taken from *S.E.R.S. Statistical Study*, October, 1958, and S.S.N., May 1959, p. 1. Number of school districts desegregating each year since 1954 are from S.E.R.S. and various issues of S.S.N., except for the States of Delaware, Kentucky, and Maryland where data come from Commission questionnaires and official state reports. Due to consolidation, the total number of school districts in Delaware, Georgia, Kentucky, Missouri, Oklahoma, and Texas has diminished, causing a reduction in the number of biracial districts. An increase in districts in North Carolina and Tennessee has caused an increase in biracial districts. Since there is no indication of which districts were consolidated, the changes cannot be reflected in the Table.

[2] Includes 18 districts that have adopted a desegregation policy but have had no applications for transfer. Nine districts have no Negro pupils in the year 1958–59.

[3] Includes 8 districts that have adopted a desegregation policy but have enrolled no Negroes in a formerly white school. One denied an application for transfer because the applicant's residence was closer to the Negro school.

[4] Delaware: Gebhart v. Belton, 91 A. 2d 137 (1952).

[5] Kentucky: Willis v. Walker, 136 F. Supp. 177 (W. D. Ky. 1955). West Virginia: Dunn v. Bd. of Education, Civ. No. 1693, S. D. W. Va., Jan. 3, 1956, 1 *Race Rel. L. Rep.* 319 (1956); Taylor v. Bd. of Education, Civ. No. 159, S. D. W. Va., Jan. 10, 1956, 1 *Race Rel. L. Rep.* 321 (1956).

[6] Tennessee: McSwain v. Bd. of Education, 138 F. Supp. 570 (M. D. Tenn. 1956). Texas: Jackson v. Rawdon, Civ. No. 3152, N. D. Tex., Aug. 27, 1956, 1 *Race Rel. L. Rep.* 884 (1956). West Virginia: Anderson v. Bd. of Education, Civ. No. 437, S. D. W. Va., Dec. 29, 1955, 1 *Race Rel L. Rep.* 892 (1956); Shedd v. Bd. of Education, Civ. No. 833, S. D. W. Va., April 11, 1956, 1 *Race Rel. L. Rep.* 521 (1956).

[7] Arkansas: Aaron v. Cooper, 143 F. Supp. 855 (E. D. Ark. 1956). Kentucky; Gordon v. Collins, Civ. No. 720, W. D. Ky., Jan. 15, 1957, 2 *Race Rel. L. Rep.* 304 (1957); Garnett v. Oakley, Civ. No. 721, W. D. Ky., Jan. 23, 1957, 2 *Race Rel. L. Rep.* 303 (1957); Mitchell v. Pollock, Civ. No. 708, W. D. Ky., Feb. 8, 1957, 2 *Race Rel. L. Rep.* 305 (1957); Dishman v. Archer, Civ. No. 1213, E. D. Ky., Jan. 17, 1957, 2 *Race Rel. L. Rep.* 597 (1957). Maryland: Moore v. Bd. of Education, 152 F. Supp. 114 (D. Md. 1957), *aff'd. sub. nom.*; Slade v. Board, 252 F. 2d 291 (1958). Oklahoma: Carr v. Cole, Civ. No. 7355, W. D. Okla., Jan. 23, 1957, 2 *Race Rel. L. Rep.* 316 (1957); Brown v. Long, Civ. No. 4245, E. D. Okla., Sept. 21, 1957, 3 *Race Rel. L. Rep.* 11 (1958). Tennessee: Kelley v. Bd. of Education, Civ. No. 2094, M. D. Tenn., Jan. 21, 1957, 2 *Race Rel. L. Rep.* 21 (1957).

[8] Kentucky: Wilburn v. Holland, 155 F. Supp. 419 (W. D. Ky. 1957); Grimes v. Smith, Civ. No. 167, E. D. Ky., Feb. 20, 1958, 3 *Race Rel. L. Rep.* 454 (1958). Maryland: Groves v. Bd. of Education, 164 F. Supp. 621 (D. Md. 1958). Oklahoma: Simms v. Hudson, Civ. No. 4246, E. D. Okla., Nov. 14, 1957, 3 *Race Rel. L. Rep.* 12 (1958); Jefferson v. McCart, Civ. No. 4532, E. D. Okla., Oct. 10, 1958, 3 *Race Rel. L. Rep.* 1154 (1958). Virginia: School Board of Norfolk v. Beckett, 260 F. 2d 18 (4th Cir. 1958); Hamm v. County School Board, 263 F. 2d 226 (1959); Kilby v. County School Board, Civ. No. 530, W. D. Va., Oct. 9, 1958, 3 *Race Rel. L. Rep.* 973 (1958); Jones v. School Board, Civ. No. 1770, E. D. Va., Feb. 6, 1959, 4 *Race Rel. L. Rep.* 29 (1959).

started to desegregate. In Arkansas, North Carolina, Tennessee, and Virginia only a few have started.

The 798 school districts that have initiated desegregation constitute 27 percent of the 2907 biracial districts in the segregating States. Approximately 3 percent acted under court order, although there were others that proceeded after suit was filed or under threat of litigation.[4]

The record by school districts, however, tells only a part of the story.

Just as the districts that have moved toward compliance are located in States with a small percentage of Negroes, so has it generally been districts having the smallest percentage of Negroes that have made a start.[5] In addition, some of the districts that are classified as desegregated by virtue of the adoption of a transfer plan have never in fact enrolled a Negro pupil in a white school.[6] In others, by reason of selective placement, the number of Negroes in formerly white schools is very small.[7]

Table 19 shows the actual number of Negro pupils enrolled in schools attended by both races in each of the eleven States where such enrollment exists and in the District of Columbia. The last column in this table shows the percentage of Negroes enrolled with whites.

Thus, whereas about 15 per cent of the Negro pupils in these 11 States are enrolled in desegregated schools, 27 per cent of the biracial school districts are listed as desegregated. But if all 17 of the segregating States and the District of Columbia are considered, it is found that 93 per cent of the total Negro school enrollment are still in all-Negro schools. It does not follow, however, that all of these Negroes have been denied their constitutional right not to be discriminated against because of their race in admission to public schools.

An authoritative and accurate determination of the number of Negro children at present segregated in violation of the Supreme Court ruling would require an adjudication by the Supreme Court of the State laws, policies, and practices governing each school district. Lacking such a determination, the policies and practices by which desegregation has been effected, discussed in previous chapters, will be considered in the light of the pertinent court decisions.

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[4] E.g., Van Buren, Arkansas: *Banks* v. *Izzard*, Civ. No. 1236, W. D. Ark., Aug. 3, 1957; 2 *Race Rel. L. Rep.* 965 (1957), (suit dismissed upon acceptance of desegregation plan by the plaintiffs); New Castle County, Del.: *Evans* v. *Buchanan*, 145 F. Supp. 873 (D. Del. 1956). (Christiana School District, one of eight defendant districts).

[5] E.g., Texas and Arkansas.

[6] E.g., Districts in Kentucky, Maryland and Texas. See footnotes (2) and (3) to Table 00, p. 4.

[7] E.g., Districts in North Carolina and Virginia.

TABLE 19.—*Status of segregation-desegregation, 1958–59, in 11 States and District of Columbia*

	Enrollment (1)			Negroes Enrolled in Desegregated Schools	Percent of Total Negro Enrollment
	Total	White	Negro		
Arkansas	419,971	316,441	103,530	76	0.07
Delaware (2)	73,551	60,141	13,410	5,717	42.63
District of Columbia (3)	111,756	28,623	83,133	68,421	82.30
Kentucky (4)	585,857	546,149	39,708	11,468	28.88
Maryland (5)	556,290	432,485	123,805	37,840	30.56
Missouri	787,000	708,300	78,700	74,135	94.20
North Carolina (6)	1,063,000	749,000	314,000	13	.004
Oklahoma (7)	542,000	507,000	35,000	8,351	23.86
Tennessee (8)	790,000	652,540	137,460	90	.07
Texas (9)	1,955,425	1,692,615	262,810	3,750	1.43
Virginia (10)	827,500	623,935	203,565	51	.03
West Virginia (11)	464,402	439,324	25,078	6,259	24.9
Total	8,176,752	6,756,553	1,420,199	216,171	15.22

(1) All enrollment figures from S.E.R.S., Statistical Summary, October 1958, except as otherwise indicated.
(2) Report of State Department of Education and S.S.N., December 1958, p. 9, total enrollment: Negroes in desegregated schools—Commission questionnaires.
(3) Commission questionnaire.
(4) State Department of Education and Commission questionnaires. Total enrollment as of June 1958.
(5) State Department of Education and Commission questionnaires.
(6) Negroes in desegregated schools, S.S.N., September 1958, p. 13; November 1958, p. 15.
(7) Negroes in desegregated schools—State Department of Public Instruction, Nov. 12, 1958.
(8) Nashville and Anderson counties—data from Commisssion questionnaires.
(9) Negroes in desegregated schools, Texas Education Commissioner, S.S.N., October 1958, p. 14.
(10) Negroes in desegregated schools, S.S.N., March 1959, p. 14.
(11) Negroes in desegregated schools, Nashville Conference, p. 116.

In Chapter I some of the basic questions that school boards and lower courts were going to have to answer in the application of the ruling of the Supreme Court in the *School Segregation Cases* were presented.[8] Developments since 1955 require the addition of two more questions: (1) Can a plan, once initiated, be suspended? and (2) Can a State constitutionally grant financial aid to pupils to attend private segregated schools? These questions will be examined.

A prompt and reasonable start

In the first years after the Supreme Court decision, the lower courts were liberal in finding that "a prompt and reasonable start toward full compliance" had been made if a school board had exhibited any activity pointing toward compliance. The formation of a citizens or other committee to study the problems of desegregation,[8] or study and planning by the board itself, was held sufficient.[9] Courts al-

[8] Robinson v. Board of Education of St. Mary's County, 143 F. Supp. 481 (D. Md. 1956); Kelley v. Board of Education of Nashville, 139 F. Supp. 578 (M. D. Tenn. 1956).
[9] Aaron v. Cooper, 143 F. Supp. 855 (E. D. Ark. 1956).

lowed school boards six months or more to prepare plans.[10] In one case, the board had even had the problem before it for five years without taking positive action.[11]

In another instance, failure for two years to take any action resulted in an injunction ". . . to dispel the misapprehension of the school authorities as to their obligations under the law and to bring about their prompt compliance with constitutional requirements as interpreted by the Supreme Court."[12] The same court, however, later postponed the injunction so that the school board could present a plan involving a six-month delay. This was in order to prepare the Negro children to enter a white school.[13] The plan was, in due course, approved.[14]

District courts in some cases have entered only general orders, without time limits, which have not resulted in a start of any kind.[15] Two of the original *School Segregation Cases* may be used as examples. In the Clarendon County, South Carolina, case, upon reconsideration after remand, an injunction was entered to be effective "from and after such time as they [the members of the school board] may have made the necessary arrangements for admission of children to such school on a nondiscriminatory basis with all deliberate speed."[16] The case was retained on the docket for entry of further orders and nothing more appears to have happened.

The School Board of Prince Edward County was the Virginia defendant in the *School Segregation Cases.* Upon remand from the United States Supreme Court a similar, indefinite order was entered.[17]

The plaintiffs in the *Prince Edward County* case, however, have been more persistent than those in South Carolina. Upon motion to order admission of the plaintiffs in September, 1956, the district court deferred the entrance of an order because public opinion opposed it and because such an order would lead to the closing of the school under State law.[18] The court of appeals reversed the decision and instructed the district court to order the school board to make a

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[10] Banks v. Izzard, Civ. No. 1236, W. D. Ark., Jan. 18, 1956, 1 *Race Rel. L. Rep.* 299 (1956).

[11] McSwain v. Board of Education of Anderson County, 138 F. Supp. 570 (E. D. Tenn. 1956).

[12] School Board of Charlottesville v. Allen, 240 F. 2d 59 (4th Cir. 1956), *cert. denied,* 353 U.S. 910.

[13] Allen v. School Board of Charlottesville, 263 F. 2d 295 (4th Cir. 1959).

[14] Allen v. School Board of Charlottesville, E.D. Va., March 1959.

[15] In addition to cases cited in notes 16 and 17 *infra;* see also, Bell v. Rippy, 146 F. Supp. 485 (N.D. Tex. 1956), *rev'd, sub. nom.* Borders v. Rippy, 247 F. 2d 268 (5th Cir. 1957); Bush v. Orleans Parish, 138 F. Supp. 337 (E.D. La. 1956), *aff'd,* 242 F. 2d 156 (5th Cir. 1956), *cert. denied,* 354 U.S. 921 (1957).

[16] Briggs v. Elliott, 132 F. Supp. 776 (E.D.S.C. 1955).

[17] Davis v. County School Board of Prince Edward County, Civ. No. 1333, E.D. Va., July 18, 1955, 1 *Race Rel. L. Rep.* 82 (1956).

[18] 149 F. Supp. 431 (E.D. Va. 1957).

prompt and reasonable start.[19] The district court then fixed ten years following the 1955 decision in the *Brown* case as the time for such compliance.[20] The court of appeals reversed this order on May 6, 1959 [21] because the school authorities had taken no action whatever in the four years since the second decision in the *Brown* case and contemplated none. As a result of this decision, the Board of Supervisors of the county refused to appropriate any funds for operation of public schools in 1959–60 and also denied an alternate request for funds for tuition grants.[22] Thus, one school district appears to have abandoned public education in preference to desegregation.

In the 1955 decision, the Supreme Court said that the vitality of the principles announced cannot yield to mere disagreement with them.[23] In *Cooper* v. *Aaron*, the Supreme Court was even more forceful and said that the relevant factors to be considered by the district court excluded hostility to racial desegregation.[24] However, such tangible factors as overcrowed schools,[25] building programs in process,[26] disadvantage of mid-year entrance,[27] and preparation of professional personnel, pupils and community,[28] have been held sufficient singly and in combination to justify a short and definite deferment in putting a plan into operation. But after a finding that there are no administrative problems in the admission of Negro students to the existing white schools, the members of a school board as state officials sworn to uphold the Constitution have been held to have a duty to admit them forthwith.[29] This view is supported by the words of the Supreme Court in *Cooper* v. *Aaron*: "Of course, in many locations, obedience to the duty of desegregation would require the immediate general admission of Negro children." [30] Admission forthwith has been ordered where no Negro school was maintained in the district.[31] The rationale of these cases is reminiscent of the separate-but-equal-doctrine cases.[32]

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[19] *Sub. nom.*, Allen v. County School Board, 249 F. 2d 462 (4th Cir. 1957) *cert. denied*, 355 U.S. 953 (1958).

[20] 164 F. Supp. 786 (E.D. Va. 1958).

[21] 27 U.S.L. Week 2564 (1959).

[22] *New York Times*, June 7, 1959, p. 62.

[23] 349 U.S. 294, 300 (1955).

[24] 358 U.S. 1, 6 (1958).

[25] Willis v. Walker, 136 F. Supp. 181 (W.D. Ky. 1955) ; Simms v. Hudson, Civ. No. 4286, E.D. Okla., Nov. 14, 1957, 3 *Race Rel. L. Rep.* 12 (1958).

[26] Moore v. Board of Education of Harford County, 152 F. Supp. 114 (D. Md. 1957), *aff'd sub. nom.*, Slade v. Board of Education, 252 F. 2d 291 (4th Cir. 1958) ; Shedd v. Board of Education of Logan County, Civ. No. 833, April 11, 1956, S.D. W. Va., 1 *Race Rel. L. Rep.* 521 (1956).

[27] Wilburn v. Holland, 155 F. Supp. 419 (W.D. Ky. 1957).

[28] Aaron v. Cooper, 143 F. Supp. 855 (1957) *aff'd*, 243 F. 2d 361 (1957).

[29] Hoxie v. Brewer, 137 F. Supp. 364 (E.D. Ark. 1956) *aff'd*, 238 F. 2d 91 (8th Cir. 1956) ; see also, Groves v. Board of Education of St. Mary's County, 164 F. Supp. 621 (D. Md. 1958), *aff'd*, 261 F. 2d. 527 (4th Cir. 1958).

[30] 358 U.S. at 6 (1958).

[31] Willis v. Walker, 136 F. Supp. 181 (W.D. Ky. 1955) ; Kilby v. School Board of Warren County, Civ. No. 530, W.D. Va., Sept. 8, 1958, 3 *Race Rel. L. Rep.* 972 (1958).

[32] See Corbin v. School Board of Pulaski County, 177 F. 2d 924 (4th Cir. 1949).

Full compliance

One of the questions the Supreme Court left unanswered was, What, short of the unification of the dual school system, would be held to constitute compliance with the new constitutional standard?

Several lower courts have stated that abolishing discrimination does not necessarily mean that white and Negro children shall be "mixed" in the schools.[33] Nor does it require that Negro schools be abolished if attendance at such schools is voluntary.[34] The fact that a school may be attended only by members of one race because only one race lives within the attendance area is not constitutionally objectionable,[35] in the absence of bad faith, or gerrymandering, in the zoning.[36]

On the positive side, a desegregation plan permitting a Negro to apply for transfer from the Negro school to a white school nearer his home has been approved.[37] It should be noted that continued operation of both white and Negro schools and initial assignment of pupils thereto by the school board, on the basis of race, seems to be inherent in such a plan.

The North Carolina "Pearsall Plan" seems in practice to operate in this way. The legislature has vested in the local school boards, authority to enroll pupils in specific schools within their districts in a manner to provide for orderly and efficient administration of the schools, effective instruction, and the health, morals, and safety of their pupils.[38] So far as the Commission has been able to ascertain, the school boards of North Carolina unanimously exercised this discretion by assigning *all* white students to white schools and *all* Negro students to Negro schools.[39]

The North Carolina statute permits any parent or guardian of a child dissatisfied with the initial assignment to apply to the board for transfer. It also provides administrative appeals for those dissatisfied with the action of the board. A few applications have been acted upon favorably by the school boards in three cities.[40] Individual

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[33] See e.g., Allen v. School Board of Prince Edward County, 249 F. 2d 462 (4th Cir. 1957); Briggs v. Elliott, 132 F. Supp. 776 (E.D. S.C. 1955).

[34] Jefferson v. McCart, Civ. No. 4532, E.D. Okla., Oct. 10, 1958, 3 *Race Rel. L. Rep.* 1154 (1958).

[35] Brown v. Board of Education of Topeka, remand, 139 F. Supp. 468 (D. Kans. 1955); Henry v. Godsell, Civ. No. 14,769, E.D. Mich., Aug. 12, 1958, 3 *Race Rel. L. Rep.* 914 (1958).

[36] Clemons v. Hillsboro, 228 F. 2d 853 (6th Cir. 1956).

[37] Moore v. Board of Education of Harford County, *supra* note 26, *aff'd sub. nom.*, Slade v. Board of Education, 252 F. 2d 291 (4th Cir. 1958).

[38] Act of March 30, 1955, N.C. Laws 1955, ch. 366, p. 976 as amended by Act of July 27, 1956, N.C. Ex. Sess. 1956, ch. 7, p. 14.

[39] Nashville Conference, p. 105; Wey and Corey, *Action Patterns in School Desegregation*, p. 123.

[40] Charlotte, Greensboro, and Winston-Salem. Wayne County has zoned one school built with Federal funds for the exclusive use of dependents of Air Base personnel, including the child of a Negro sergeant.

assignment and the need to exhaust administrative remedies has barred class suits.[41] Hence, the fundamental constitutional question of whether the right to apply for transfer validates the initial assignment by race has not yet had a judicial hearing on its merits.[42]

Plans achieving the same result by revision of the attendance areas of all schools on a nonracial basis, with provision for transfer from the school of the zone of residence to a school where the race of the student predominates,[43] seem to be on more solid constitutional ground. In such instances, initial racial assignment by the school board is avoided.

Both types of decisions, in effect approving segregation by choice, explain in part the small number of Negroes attending school with white pupils in many States that appears in Table 19 above. How long the Negro pupils may continue to elect to stay in or return to all-Negro schools and what adjustment may be required when they stop doing so is for the future.

Adjudication of the administration of pupil placement laws is yet to come. The Alabama statute granting the local school boards authority to assign pupils on a basis of various nonracial criteria has been upheld by the Supreme Court as valid on its face.[44] The action of two Virginia school boards in applying nonracial criteria to applications for transfer has had recent court examination.

The school board of Arlington County applied the following criteria in considering applications for transfer: academic accomplishment, psychological problems and adaptability of applicant; attendance area and overcrowding of the school; and proximity of the school to the residence of the applicant.

None of the criteria were discarded by the court although "psychological problems" was disregarded as a basis for rejection due to lack of sufficient evidence. After consideration of each application and the reasons for rejection, four of the five rejected by the board for lack of "adaptability" were ordered admitted.[45] An appeal was

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[41] Carson v. Warlick, 238 F. 2d 724 (4th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957); Carson v. Board of Education of McDowell County, 227 F. 2d 789 (4th Cir. 1955); Joyner v. McDowell County Board of Education, 92 S.E. 2d 795 (N.C. 1956).

[42] No case has been found in which the assignment of all children already enrolled to their previous school was coupled with individual assignment of *all* pupils new to the system, namely first graders and new residents. Such transitional procedure seems less at variance with the law than continued assignment by race with the right of transfer.

[43] Aaron v. Cooper, 143 F. Supp. 855 (E.D. Ark. 1957) *aff'd*, 243 F. 2d 361 (8th Cir. 1957); Kelley v. Board of Education of Nashville, Civ. No. 2094, M.D. Tenn., Jan. 21, 1957, & July 17, 1958, *aff'd*, Civ. No. 13748, C A 6, June 17, 1959. *But see* Brown v. Board of Education of Topeka, Kans., *supra* note 35, in which the court criticized a rule permitting a choice between the school of zone of residence and another. An alternative plan for placement of pupils in white, Negro, or mixed schools by parents' preference was held unconstitutional in the *Kelley* case, 159 F. Supp. 272 (M.D. Tenn. 1958), *aff'd*, —— F. 2d —— (6th Cir. 1959).

[44] Shuttlesworth v. Birmingham Board of Education, 358 U.S. 101 (1958).

[45] Thompson v. School Board of Arlington, 166 F. Supp. 529 (E.D. Va. 1958).

taken by the unsuccessful applicants rejected on other grounds and on March 19, 1959, the Court of Appeals remanded the case to the District Court with direction to require the school board to re-examine the applications. In so doing, the Court of Appeals stated that evidence in the record showed that Negro applicants for transfer had been subjected to tests not applied to white students asking for transfer.[46]

Upon reconsideration the board again rejected all applications. The District Court reaffirmed its approval of the criteria. However, four students who had been rejected for overcrowding of the school to which they sought admission, and eight others, rejected for deficiency in academic accomplishment, were ordered admitted because they had been held to a more strict requirement in this regard than white students.[47] The admonition of the Court of Appeals with regard to applying tests to Negroes not applied to whites was thus duly observed by the District Court.

The school board of the City of Norfolk on July 17, 1958 adopted elaborate, general standards and procedures for testing and interviewing pupils seeking enrollment in any school previously attended only by students of the opposite race.[48] The requirements, therefore, applied equally to pupils of both races new to the school system, and to any Negro children seeking admission to existing white schools or any white children seeking admission to existing Negro schools.

Of 151 Negroes who applied for transfer, all were rejected by the board, for the following reasons: 63 for declining to take or complete the prescribed tests and interviews, 60 for unsuitability (principally scholastically), 4 because they would be isolated in a white school, 15 because of racial conflict in the area of the school applied for, and 9 because retransfer would be required in September 1959 upon the completion of a new school.[49]

In conference with the school board on August 25, 1958 the District Judge indicated his doubt as to the constitutionality of rejection because of racial conflict in the vicinity of the school or of rejection because of isolation and requested the board to reconsider all applications.[50] Thereafter the board reconsidered on the basis of its understanding of the court's interpretation of the law and granted the applications of 17 who had duly filed written objections to the denial of the applications.[51] The substantive reasons given for again deny-

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[46] Hamm v. County School Board of Arlington, 263 F. 2d 226 (4th Cir. 1959), *motion for recall den.* — U.S. — (1959), 4 *Race Rel. L. Rep.* 14 (1959).

[47] Thompson v. County School Board of Arlington, Civ. No. 1341, D.C.E.D. Va., July 25, 1959.

[48] 3 *Race Rel. L. Rep.* 942–944 (1958).

[49] 3 *Race Rel. L. Rep.* 945, 946 (1958).

[50] 3 *Race Rel. L. Rep.* 946–955 (1958).

[51] 3 *Race Rel. L. Rep.* 955 (1958).

ing other applications were: proximity to the Negro school, deficiency in scholastic achievement, and the necessity of retransfer upon completion of a new school.[52]

The District Court denied a motion to defer admission of the 17 applicants until September 1959 and approved the rejection of the other 134 applications, but reserved for further consideration questions relating to the validity of all standards and criteria and procedure adopted by the board, many of which had not been applied in the 134 cases.[53] Upon appeal by the board the order as to the admission of the 17 applicants was affirmed and the case remanded to the District Court as to the 134.[54] The District Court again upheld the action of the board in denying the 134 applications as not capricious, arbitrary or illegal in administration, and found the standards, criteria and procedures adopted by the board not unconstitutional on their face.[55]

These two decisions provide the only guidelines for the application of criteria for pupil placement.

A problem of desegregation raised by the existence of all-white and all-Negro school districts has been mentioned. The only case noted where such a situation existed is *Holland* v. *Board of Public Instruction of Palm Beach County*.[56] In this case, the District Court held that an application by a Negro for transfer to a white school in another district had been denied as an administrative decision because of overcrowding. The Court of Appeals reversed and remanded this decision.[57] It appeared that the Negro plaintiff lived in a school district that had originally been created for tax purposes in 1912 and designated as a Negro residential area by city ordinance. The court found it unnecessary to consider the charge of gerrymandering. This was because the plaintiff's ineligibility to attend the school he applied for was not an excuse for the failure of the defendent to provide nonsegregated schools. The court said:

> In the light of the compulsory residential segregation of the races by city ordinance, it is wholly unrealistic to assume that the complete segregation existing in the public schools is either voluntary or the incidental result of valid rules not based on race.[58]

This decision suggests that districting based on race will be ignored by the courts.

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[52] *Ibid.*

[53] Beckett v. School Board of Norfolk, Civ. No. 2214, D.C.E.D. Va. Sept. 18, 1958, 3 *Race Rel. L. Rep.* 1155 (1958).

[54] 260 F. 2d 18 (1958).

[55] Civ. No. 7161–M, D.C.S.D. Fla., July 5, 1957, 2 *Race Rel. L. Rep.* 785 (1957).

[56] Civ. No. 7161–M, D.C.S.C. Fla., July 5, 1957, 2 *Race Rel. L. Rep.* 785 (1957).

[57] 258 F. 2d 730 (5th Cir. 1958).

[58] *Id.* at 732.

Deliberate Speed

Another factor affecting the number of Negroes now enrolled in formerly white schools is the fact that some gradual plans are in an early stage of implementation. Cases presenting gradual plans are providing answers to the question of what is deliberate speed under varying conditions. Six-years,[59] seven-year,[60] and twelve-year [61] plans have received court approval. In the case of the seven-year plan, a court was asked to approve the transition on a year-to-year basis in high schools, after desegregation of elementary schools in three years. Before approving the plan, the court required a modification permitting applications for transfer from pupils then above the desegregated grade. Such applications were to be approved or disapproved on the basis of probability of academic success and adjustment of the applicant. The method there approved seems comparable to the pupil placement plans.

Another court rejected both a twelve-year and a four-year plan [62] as not meeting the requirements of "all deliberate speed." The court said that the primary reason for delay was the psychological unreadiness of the community and that this was not a basis for noncompliance.[63] The court further states that it was bound by the decision of the Court of Appeals in *Booker* v. *Tennessee*.[64] In the *Booker* case, a desegregation plan for a State college from the graduate level at the rate of one class a year was considered. The justification for the five-year delay in admitting otherwise qualified first-year Negro students was overcrowding and the loss of accreditation that might result. The court acknowledged that limitation of the size of the student body was legitimate but disapproved turning away qualified Negroes while continuing to admit white students.

In West Virginia, when Negroes requested admission to an overcrowded white public school, a plan was set up under which they were placed on a nonracial waiting list. (White students applying later were to be added to the list.) Thus, preference or discrimination by race was avoided.[65]

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[59] Aaron v. Cooper, *supra* note 9.

[60] Moore v. Board of Education of Harford County, 152 F. Supp. 114, *supra* note 37.

[61] Kelley v. Board of Education, Civ. No. 2094, D.C.M.D. Tenn., Jan. 21, 1957 & July 17, 1958, appeal docketed (4th Cir.); 2 *Race Rel. L. Rep.* 21 (1957); 3 *Race Rel. L. Rep.* 651 (1958); Evans v. Buchanan, Civ. No. 1816–22, D.C. Del., April 24, 1959 (27 U.S.L. Week 2555).

[62] Mitchell v. Pollock, Civ. No. 708, W.D. Ky., Sept. 27, 1956, and Feb. 8, 1957, 1 *Race* Rel. L. Rep. 1038 (1956) and 2 *Race Rel. L. Rep.* 305 (1957).

[63] 2 *Race Rel. L. Rep.* 305, 308 (1957).

[64] 240 F. 2d 89 (6th Cir. 1957), *cert. denied*, 353 U.S. 965 (1957).

[65] Dunn v. Board of Education of Greenbrier County, Civ. No. 1693, S.D. W.Va., Jan. 3, 1956, 1 *Race Rel. L. Rep.* 319 (1956); Taylor v. Board of Education of Raleigh County, Civ. No. 159, S.D. W.Va., Jan. 10, 1956, 1 *Race Rel. L. Rep.* 321 (1956).

In *Evans* v. *Buchanan* [66] a District Court approved a grade-a-year plan for all segregated school districts in Delaware. Plaintiffs had protested the delay as based upon community hostility to desegregation, in violation of the principles stated in *Cooper* v. *Aaron*.[67] The court, however, distinguished the case before it from the latter case on the ground that the question presented was different, saying:

> But here the court is faced, not with the question of whether there shall be integration at all, but with deciding the most sensible way of carrying [it] out . . .[68]

Hostility was excluded by the Supreme Court not only as a ground for suspension of a plan already in operation, as discussed below, but apparently also as a factor in determining the timing of a desegregation plan. The Court said:

> . . . a District Court, after analysis of the relevant factors (which of course excludes hostility to racial desegregation) might conclude that justification existed for not requiring the present nonsegregated admission of all qualified Negro children . . .[69]

In *Evans* v. *Buchanan*, however, the District Court mistakenly considered, among other factors, community hostility to racial segregation.

Suspension of plan

The Supreme Court stated in its implementing decree that "once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner".[70] These words formed the crux of the only case heard on its merits by the Court since the original School Segregation Cases.[71] The question presented was the suspension of the operation of the Little Rock plan for gradual integration from the close of the school year 1957–58 until January, 1961, and a return to a segregated status for that period as ordered by the district court [72] and reversed but stayed by the court of appeals.[73] The district court found a suspension in the public interest due to the "chaos, bedlam, and turmoil" prevailing in the desegregated school as a result of extreme community hostility toward the program. It distinguished prior cases requiring a prompt and reasonable start from its action in granting a moratorium *after* such a start. The Supreme Court upheld the Court of Appeals on the ground that constitutional rights cannot yield to violence and

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[66] Civ. No. 1816–22, D.C. Del., April 24, 1959; 27 U.S.L. Week 2555 (1959).
[67] 358 U.S. 1 (1958).
[68] *Supra* note 66.
[69] *Infra* note 70.
[70] Brown v. Board, 349 U.S. 294, 301 (1955).
[71] Cooper v. Aaron, 358 U.S. 1 (1958).
[72] 163 F. Supp. 13 (E.D. Ark. 1958).
[73] 257 F. 2d 33 (8th Cir. 1958).

disorder.[74] The fact that the conditions found by the district court to justify the suspension were traceable directly to the official actions of legislators and executive officials of the State did not pass unnoticed. The Supreme Court said that every State official is committed, by his oath of office, taken pursuant to Article VI, to support the Constitution as interpreted by the judicial department.

The order of the district court allowed more than a suspension (it required Negroes already admitted to the white high school under the plan to be withdrawn), but this was not mentioned either by the district court, the court of appeals, or the Supreme Court. In spite of this decision, it cannot be said that a mere postponement of the *next* step in a gradual plan would not be approved if a constructive program for the period of the suspension were offered.[75]

Evasive schemes

In *Cooper* v. *Aaron*[76] the Supreme Court recognized that public education is primarily the concern of States but pointed out that State action in discharge of this responsibility must be exercised in a constitutional manner. The court then said:

> State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws.[77]

This clear statement has since led to an injunction restraining the Little Rock school board from leasing a school which had been closed under State law, to private interests for use as a segregated school.[78] The intended lease also included the services of public school teachers under contract to teach in the closed high school.[79] The district court was instructed not only to enjoin the school board from transferring possession of school property for segregated operations but also from engaging in any other acts "capable of serving to impede, thwart, or frustrate the execution of the integration plan mandated against them . . .".[80]

The payment of tuition grants out of appropriations for public schools has been enjoined, not on constitutional grounds, but because the funds from which they were to be paid were appropriated for public schools.[81] There is a fundamental question here that has not been answered. This is whether or not a state or an agency thereof can

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[74] See note 71 *supra.*
[75] See Allen v. School Board of Charlottesville, *supra,* 263 F. 2d 295 (1957).
[76] See note 71 *supra.*
[77] See note 71 *supra,* at 19.
[78] Aaron v. Cooper, 261 F. 2d 97 (8th Cir. 1958).
[79] *Id.* at 104.
[80] *Id.* at 108.
[81] Harrison v. Day, 106 S.E. 2d 636 (1959).

supply funds for tuition to nonsectarian, private, segregated schools for those who object to attending a school attended by another race, without bringing the private school within the scope of the Fourteenth Amendment.[82]

THE PROSPECTS FOR THE FUTURE

The record of desegregation shown in Table 18, page 296, indicates that the impetus of voluntary compliance reached a peak in September, 1956, and has declined rapidly since that date. This suggests that future progress will be at a much slower pace in the absence of events providing a new stimulus. Experience shows that this might arise from court orders, from the invalidation of State laws now preventing voluntary action, or from strong leadership. Each of these possibilities will be considered.

Court orders

There are both advantages and disadvantages in having the time, place, and method of desegregation determined by court order.

On the benefit side, a court order relieves the local school board of the onus of action against the wishes of the community. This is particularly important in small communities where board members are well known to the citizenry and may be subject to harassment and economic pressure.[83] Even in larger places, however, school officials have not been immune from abuse when they acted voluntarily.[84] Furthermore, a court order enlists the support of law-abiding elements of the community otherwise opposed to desegregation.[85]

When the court order results from the invalidation of a State law designed to thwart compliance, it has the further effect of reaffirming the fact that the Constitution, as interpreted by the Supreme Court, is the law of the land in all States of the Union. Any notion that State activities do not have to meet constitutional requirements has to be corrected before school boards are free to work out plans to meet the needs of their communities.[86]

On the debit side, desegregation by court order leaves the selection of the time, place, and to a considerable extent manner of compliance, to individuals other than the responsible local leaders. Negro leader-

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[82] The constitutional question is whether such indirect public financial support constitutes state action of a character to deprive the institution so supported of its private character. For early cases on the subject, see: Kerr v. Enoch Pratt Free Library, 149 F. 2d 211 (4th Cir. 1945) *cert. denied,* 326 U.S. 721; Norris v. Mayor and City Council of Baltimore, 78 F. Supp. 451 (Md. 1948); Clark v. Maryland Institute, 41 Atl. 126 (Md. 1898).

[83] See *supra,* p. 292f.

[84] See *supra,* p. 293.

[85] Nashville Conference, p. 87.

[86] See *supra,* p. 232.

ship cannot be justly criticized for resorting to legal action when no other course is open, but the locality where a plaintiff may be willing to incur community displeasure by bringing suit may not be the best place in a particular State or region to take the step at a particular time.

Community preparation and participation in the planning of desegregation has been found conducive to a smooth transition.[87] Such preparation and planning is lacking when desegregation comes precipitately by court order, producing instead community hostility and disorder.[88]

Desegregation by court order has the further disadvantage of making a single community, and in some cases a single school, the target for professional agitators.[89] This has sometimes been avoided by cooperative planning and simultaneous action by several nearby districts.[90]

Those who oppose desegregation may favor action only by court order because of the possibilities for delay inherent in legal action and the fact that it affects only one district, one school, or even one pupil at a time. However, the record to date does not show that the various permissive and selective plans voluntarily adopted have resulted in a precipitate rush of Negroes into the white schools.[91]

The advantage or disadvantage of desegregating one district at a time was lost in Delaware when eight pending cases were consolidated and the State Board of Education was ordered to present a desegregation plan for all segregated school districts in the State.[92] The State Board, as a party defendant, presented a plan that was recently approved by the district court,[93] but whether the individual school districts that were not parties to the action will voluntarily comply remains to be seen. At all events they have lost the opportunity of preparing a plan designed to fit their particular local conditions.

Invalidation of State laws

Laws requiring a local referendum before a school board can initiate a desegregation program (as in Texas), or before closed schools can be reopened on a desegregated basis (as in Arkansas), obviously impede the progress of desegregation. Both Texas and Arkansas have many segregated school districts with small Negro population, in

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[87] See *supra*, 282 ff.
[88] See *supra*, p. 203f.
[89] See *supra*, p. 219.
[90] See *supra*, p. 224.
[91] See *supra*, p. 279.
[92] Evans v. Buchanan, 152 F. Supp. 886 (D. Del. 1957) *aff'd*, 256 F. 2d 688 (3d Cir. 1958) *cert. denied*, 358 U.S. 836 (1958).
[93] See *supra*, p. 188.

which the adjustment to nondiscrimination should be very slight.[94] Yet further progress cannot be expected so long as the referendum laws stand and the people believe they have a choice of compliance or noncompliance with the law of the land.

Similarly, school-closing laws hang like a sword of Damocles over the heads of school board members. As the Court of Appeals said in the *Arlington County Virginia* case, a school board cannot be expected to act dispassionately on applications for transfer when it knows that action favorable to desegregation will result in the closing of the schools.[95] Since the invalidation of the Virginia and Arkansas school closing laws, however, such laws are found in only two States, Louisiana and Mississippi.[96]

Various forms of educational grants to those who object to attending school with a member of another race are provided by law in five states.[97] Theoretically, the presence of such laws should make a desegregation plan more acceptable to a community, since a means of escape for those opposed is apparently provided. However, doubts regarding the constitutionality of such laws may counterbalance this effect.

Since the Alabama pupil placement law was held valid on its face, it seems reasonable to predict that some of the States having such laws may attempt to use them to forestall court orders, particularly in view of the signal success of North Carolina in this regard. Indeed, the Dade County, Florida, Board of Education has already announced the assignment of Negro pupils to one white school in September, 1959.[98]

Eight states have a pupil placement law,[99] but in two the use of the law appears to be effectively blocked by school closing and referendum laws.[1]

The rate of desegration under pupil placement laws is very slow. However, such laws, honestly and fairly administered, seem particularly well suited to effect a transition in communities with large numbers of Negroes greatly handicapped both in regard to previous schooling and in the socio-economic background so largely determinative of scholastic success.[2] In communities where such conditions prevail, a selective method to permit a better educational opportu-

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[94] Three such referenda have been held in Texas to date. Two communities voted to desegregate and one to continue segregation. Little Rock voted not to integrate.

[95] Hamm v. School Board of Arlington County, 263 F. 2d 226 (4th Cir. 1959).

[96] Florida has more limited school-closing laws.

[97] Alabama, North Carolina, Georgia, Louisiana, and Virginia.

[98] Florida, Governor's Advisory Commission on Race Relations, March 16, 1959, p. 14.

[99] Alabama, Arkansas, Florida, Louisiana, North Carolina, Tennessee, Texas and Virginia. See *supra*, p. 240.

[1] Louisiana and Texas.

[2] See Education Section, Chapter VIII, *supra*.

nity to those currently able to profit from it seems a maximum objective in the absence of an extensive remedial program. At least this appears true outside of large cities, where the adjustment is possible under other methods.[3] There is, however, no indication at this time of any voluntary actions except in Florida.

In summary, the invalidation of some State laws might bring some further desegregation, but a large amount cannot reasonably be expected without other impetus.

Leadership

In previous chapters the role of State and local leadership in the desegregation of various school systems has been emphasized.[4]

State and local political leadership has supported school authorities in many places. Where desegregation has not been made a political issue, desegregation programs have moved smoothly, and educational standards have not not only been maintained but opportunities for both races have been improved. In all serious trouble-spots, opposition came from sources other than educational leaders and teachers.

The Baltimore City Superintendent, John H. Fischer, spoke eloquently in Nashville of the role of the public school in our society:

> . . . while we [the Baltimore City school authorities] recognize that the kinds of changes that we want must occur in the hearts and minds of people, the school has an enormous responsibility for what happens in the hearts and minds of people.
>
> The school, aside from the church, is the one institution we create in society to influence the content of men's minds and the quality of what goes on in those minds.
>
> We believe also that the influence of the school is related to much more than merely what the school teaches. What the school does is much more influential than what it verbalizes, and so we believe that this is one reason why in schools we must not simply wait for things to happen. We must help in sound, psychological, and educational ways to encourage the right things to happen.
>
> That is what education is for.[5]

Parents as well as educators know that children learn more by example than by words. In Baltimore and in schools in hundreds of other districts, children are learning by the example of their teachers that the worth and dignity of each individual without regard to his race, color, religion, or national origin is more than a national fable.

Unfortunately, this has not been the universal experience. The predominant leadership in some places has taught a different lesson: one of contempt for law and of personal cruelty and hate. The effect of defiant leadership upon children is even greater when it is abetted by their parents. A teacher at Clinton High School observed:

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[3] See *supra*, p. 275 ff.

[4] See Education Section, Chapters IV and VII, pp. 55 c. and 107 c.

[5] Nashville Conference, p. 145.

Some children are finding in racial issues methods of gaining attention. Many have cultivated a complete disregard for the rights and property of others. In their minds, if unconformity to law is sanctioned in one instance, it is morally right in another. Therefore, we are witnessing a carry-over of disrespect for authority of all kinds.[6]

State educational leaders have worked quietly in many States to help local school boards find the best solution to their problems. In both Oklahoma and Kentucky they have improved their school systems by pressing for the elimination of small substandard and expensive Negro schools.

The Kentucky State Board of Education has recently down-graded 44 small high schools because of small enrollment, inadequate programs, and substandard buildings and equipment. Nine of the 44 schools are Negro. Educators predicted this will result in an increase in school consolidations and integration next year.[7]

Although political leadership supporting educational leadership is not generally considered newsworthy, it is not and has not been absent in the past five years. Many superintendents at the Commission's Nashville Conference told of the strong support from State and local officials.[8] However, leadership in places where it has been absent is needed for future progress.[9]

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[6] Statement of R. G. Crossno, member of Anderson County, Tennessee, Board of Education, to Commission.

[7] S.S.N., April 1959, p. 11.

[8] Nashville Conference, pp. 17, 35, 54, 90, 100, 105, 141, 159, 183.

[9] See *Hearings on Pending Civil Rights Bills Before a Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary,* 86th Cong., 1st Sess., p. 273 (testimony of Roy Wilkins, 1959, Executive Secretary, National Association for the Advancement of Colored People) ; p. 1433 (testimony of the Hon. Arthur S. Flemming, Secretary of Health, Education, and Welfare, points 1 and 3).

CHAPTER X. FEDERAL FUNDS FOR EDUCATION

FEDERAL ACTIVITIES IN EDUCATION

The activities of the Federal government in the field of education are manifold. Its direct activities in education include the establishment and operation of schools, colleges and special educational programs for Federal employees, military personnel and their dependent children, Indians, inmates of Federal institutions, foreign nationals, and employees of State and local governments. Indirectly, the Federal government by means of financial assistance supports institutions owned and operated by others and educational and research programs conducted therein. In addition, it supports individual education in certain special fields by grants and fellowships.

The activities of the Federal government in the area of education are so widespread and diverse that limitations of time and staff have not permitted a detailed study for this report. The most recent report covering all Federal funds for and in support of education includes 137 programs costing a total of $1,997,825,000.[1] This total sum was expended for the following purposes:[2]

(1) Elementary and Secondary education	$656, 632, 000
(2) Higher education	1, 032, 524, 000
(3) Adult education	87, 220, 000
(4) In-service training of civilian personnel	3, 485, 000
(5) Education of Merchant Marine and Military Personnel	34, 497, 000
(6) Research in Educational Institutions	133, 328, 000
(7) International education	50, 139, 000
Total	1, 997, 825, 000

The figures given above are for the fiscal year 1956–57. The National Defense Education Act of 1958[3] provides several new programs that must be added thereto. The appropriations under this Act for the fiscal year ending June 30, 1959, total $115,300,000.[4] A breakdown as between elementary and secondary education and higher and adult education is not possible from the reports at hand.

The National purposes of these expenditures are basically three-fold:

(1) to contribute to or provide for education where there is a Federal responsibility or obligation;

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[1] U.S. Department of Health, Education and Welfare, *Federal Funds for Education, 1956–57 and 1957–58*, pp. 5 and 17.

[2] *Id.* at 17, 19.

[3] Public Law 864, 85th Congress, 2d Session.

[4] Information supplied by Committee on Education and Labor, House of Representatives, 86th Congress. Authorized 1960, $222,450,000.

(2) to maintain and increase the effectiveness of governmental services; and

(3) to promote the national welfare and security domestically and internationally.[5]

FEDERALLY OPERATED EDUCATIONAL INSTITUTIONS AND PROGRAMS

Items Nos. 4, 5 and 7 above totalling $88,121,000 appear to include most of the expenditures for schools, colleges and special educational programs directly operated by the Federal government. It appears that Federal agencies responsible for the above operations have adhered faithfully to the well-established Federal policy of nondiscrimination by reason of color, race, religion, or national origin. Only one problem in this area has been brought to the attention of the Commission.

Indian education

For some years it has been the policy of the Federal Government to place Indian children in local public schools insofar as possible.[6] In the school year 1957–58, more than half (55.7 percent) of the Indian children of school age attended public schools.[7] However, the Department of Interior reports some difficulty in enrolling Indian children in public schools on a nondiscriminatory basis in the States of Louisiana, Mississippi, and North Carolina.[8]

In Louisiana, the Bureau of Indian Affairs has had to maintain a small school for Chitamacha children because parish officials are unwilling to take them into white schools.

In North Carolina 89 Indian children were enrolled in white public schools in 1957–58, but most of the Cherokee children are enrolled in schools on the reservation.

In Mississippi fewer than 25 Indian children attend public schools in the larger cities. In the rural districts Indian children are not admitted to white schools and will not attend Negro schools. To meet the educational needs of the Mississippi Choctaw children, the Bureau operates Indian schools in Mississippi and enrolls some in Federal boarding schools in other States.

The Department reports that schools maintained by the Bureau in States other than those mentioned above (with the possible exception of a few isolated situations) are required by the absence of public school facilities and not because of racial discrimination.

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[5] See note 1 *supra*, at 3.

[6] U.S. Department of Interior, Bureau of Indian Affairs, *Fiscal Year 1958, Statistics Concerning Indian Education*, p. 2.

[7] *Id.* at 1.

[8] Information here and in the ensuing four paragraphs is from Department of Interior reply to Commission Questionnaire dated December 22, 1958.

FEDERALLY ASSISTED EDUCATIONAL PROGRAMS

By far the largest Federal expenditures in the field of education are in grants for assistance rather than direct operation of schools or programs. Items Nos. 1, 2, 3 and 6 totalling $1,909,704,000 seem to include principally financial support to institutions owned and operated by others and educational programs and research conducted therein. They also include individual grants and fellowships for graduate study and research in certain special fields.

DIRECT AID TO PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

The only instance of Federal aid disbursed directly to public school systems pursuant to statutory authority seems to be that paid to federally affected areas under Public Laws 874 and 815.[9] Under these laws school districts burdened by reductions in taxable valuations due to Federal ownership of property and by increased enrollment arising from Federal activities have received direct Federal aid for school construction and operation continuously since the fiscal year 1951.

Basically, this Federal legislation has recognized three categories of children for whom the Federal government assumes partial responsibility by providing funds for educational purposes:

A. Children whose parents live and work on Federal property.

B. Children whose parents live *or* work on Federal property.

C. Children whose parents have moved into an area because of Federal activity but who do not either work or live on Federal property.

The law provides specific formulas for the determination of the amount to be paid for each child in each of the three categories.

In the fiscal year 1958 payments were made under Public Law 874 on the basis of 4,590[10] Federal properties located in all States, the Territory of Guam, and the District of Columbia, in a total amount of $117,279,723.[11]

In addition to the above payments under Public Law 874 as amended, a total of $5,670,761 was paid in the fiscal year 1958 to Federal agencies and local educational agencies for free public education of children residing on Federal property.[12]

Federal aid for school house construction in federally-affected school districts follows the same general pattern of requirements for eligibility and criteria for determining Federal allocations as is contained in Public Law 874. Under Public Law 815 Federal funds

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[9] 20 U.S.C. sec. 13–14, as amended, 72 Stat. 548 (1958).
[10] Eighth Annual Report of the U.S. Commissioner of Education, June 30, 1958, p. 14.
[11] *Id.* at 10.
[12] *Ibid.*

reserved for construction of school facilities for the fiscal years 1951 to 1958 inclusive for all States and Territories total $718,436,673.[13]

The 17 States in which segregation was required by law in all public schools have received the following financial support from the Federal government for the period indicated in each case.

TABLE 20.—*School support in Federally affected areas* [1]

State	Net entitlement, Public Law 874, fiscal 1958	Federal funds, Public Law 815, fiscal 1951–58, inclusive	Payments, Public Law 874, for free public education of children residing on Federal property
Alabama	$3,129,410	$17,232,074	$53,472
Arkansas	795,872	12,123,435	----------
Delaware	170,754	305,320	2,477
Florida	3,551,899	21,241,503	647,610
Georgia	3,705,883	28,648,587	570,761
Kentucky	891,728	5,878,532	1,065,281
Louisiana	826,677	6,529,118	----------
Maryland	5,074,730	39,521,632	----------
Mississippi	864,170	5,803,649	----------
Missouri	1,433,568	12,842,235	----------
North Carolina	1,367,269	8,716,936	1,024,791
Oklahoma	4,579,951	21,039,334	----------
South Carolina	2,185,787	14,321,623	74,047
Tennessee	1,402,548	8,462,249	----------
Texas	8,346,382	46,011,621	----------
Virginia	9,459,094	52,641,375	992,354
West Virginia	142,348	145,008	----------
Total	47,928,070	301,464,231	4,430,793

[1] Eighth Annual Report, U.S. Commissioner of Education, June 30, 1958, pp. 79, 81–82, 141.

The Commission directed an inquiry to the Department of Health, Education and Welfare with regard to its policy concerning disbursements under these laws to school districts maintaining segregation. In reply it is stated:

The Act put the Federal Government—with respect to public school purposes—somewhat in the position of a local property owner who must pay taxes for the purposes of school support. These payments, therefore, are not the usual type of grants-in-aid. They are in the nature of payments in lieu of taxes on account of the existence of Federally-owned property which, if privately owned, would be taxable to the school districts.

Broadly, within the provisions of these Acts, these Federal payments are treated as local taxes for use by local educational agencies in accordance with the laws of the State. Both Acts contain specific prohibitions against Federal direction, supervision, or control of the school program.

As may be inferred from the general policy stated previously, it is our view that to withhold these payments from an otherwise eligible school district because of the existence of a pattern of racial segregation in the schools

[13] *Id.* at 141.

of such district would interpose the Department between the State and local school officials and the Federal District Court in a manner not contemplated in the orders of the Supreme Court.[14]

FEDERAL FINANCIAL AID TO ELEMENTARY AND SECONDARY SCHOOLS AND ADULT PROGRAMS ADMINISTERED BY AGREEMENT WITH A STATE AGENCY

The principal Federal educational programs carried out by agreement with an authorized State agent (usually the State Board of Education) are: vocational education, school lunch and those for strengthening science, mathematics, modern foreign language, area vocational education and guidance, counseling and testing, all included under the National Defense Education Act of 1958.

Vocational education

The regulations issued by the Office of Education of the Department of Health, Education, and Welfare, with respect to the expenditure of Federal funds and the administration of Federally aided programs of vocational education (prior to the National Defense Education Act) declare that there shall be no discrimination because of race, creed, or color.[15]

The Department of Health, Education, and Welfare has advised the Commission as follows with regard to this program:

Federal grant funds for vocational education that are made available under provisions of the several vocational education acts are allotted to the States on population ratios. These funds are administered in the several States by the State board of vocational education designated or created by the legislative authority. It is this board that determines in what schools programs of vocational education are organized and operated.

The school communities enroll students, employ teachers, and provide the instruction. There are some statutory limitations on enrollment such as age and employment. States follow a principle that courses and enrollments should have a relation to employment opportunities, and a regulation of the Office of Education (45 C.F.R. 102.18) does require that educational opportunities be available without "discrimination because of race, creed or color." The Office does not have comprehensive information relative to opportunities for enrollment in segregated school systems.[16]

School lunch

The school lunch program and its administration are clearly explained by the Secretary of Agriculture in his reply to the Commission's questionnaire:

The National School Lunch Act (42 U.S.C. 1751–1760) authorizes the operation of the National School Lunch Program on a permanent basis and provides a specific method for apportioning program funds, as well as detailed provisions

[14] Department of Health, Education and Welfare, reply dated July 1, 1959, to Commission questionnaire.

[15] 45 C.F.R. 102.18 (1948).

[16] *Op. cit. supra* note 14.

for regarding eligibility of schools and the use of funds. School lunch funds are apportioned among the States according to a formula contained in Section 4 of the Act on the basis of (1) the number of school children in the State, and (2) the per capita income in the State as it relates to the per capita income of the United States. State educational agencies enter into agreements with this Department covering the operation of the National School Lunch Program in the respective States.

In States where the State educational agency is prohibited by State law from disbursing funds to private, including parochial, schools, such schools, if otherwise eligible, may enter into school lunch agreements directly with this Department. To insure equal treatment, a proportionate share of the school lunch funds apportioned to the State is withheld for the reimbursement of lunches served to children in participating private schools. The division of funds is made at the beginning of each year and is based on the total number of children in each category of schools (public or private) in accordance with figures supplied to the Department by the U.S. Office of Education (Section 10).

Under Section 8 of the Act, State educational agencies are required to select schools for participation strictly on the basis of *need* and *attendance*. There is also a specific prohibition against racial discrimination in Section 11 of the Act which provides that if a State maintains separate schools for minority and for majority races, no funds made available pursuant to the Act are to be paid or disbursed to it unless a just and equitable distribution is made within the State, for the benefit of such minority races, of funds paid to it under the Act.

The foregoing provisions are reflected in the School Lunch Regulations which are incorporated by reference into the Agreement Governing the Operation of the National School Lunch Program. Specifically, the provisions of Section 11 of the Act are included in Section 210.17(b) of the Regulations, 23 C.F.R. 3091, published May 9, 1958.

Compliance by the State educational agencies with the fiscal provisions of their agreements and the Regulations is determined by annual audits of the State agencies performed by the Internal Audit Division of AMS and all the nonfiscal phases of State agency program administration are reviewed at least annually in a comprehensive administrative analysis of the program operations performed by representatives of the Department.

Since the inception of the National School Lunch Program in 1946, neither the audits nor administrative analyses of State educational agencies have disclosed that any State is not complying with the nondiscriminatory provisions of the Act and the Regulations, either in the selection of schools for participation, the reimbursement rates paid to them, or the supervisory assistance rendered to them. Neither have any complaints concerning discrimination of any type, been received from any schools operated for minority racial groups.[17]

National Defense Education Act programs

The National Defense Education Act of 1958 includes programs for (1) elementary and secondary schools and (2) higher, and (3) adult education. At the first and third levels, plans meeting statutory requirements are submitted to the Federal agency in charge of the program, Health, Education, and Welfare, by the State agent, designated by the State Legislature, for expanding, adding to or initiating a new program for implementation by local school districts in the areas

[17] Commission Questionnaire.

specified in the law, mentioned above. After the fiscal year 1959 all funds except for statistical information at the State level are on a matching basis.

There is no provision in the statute nor in any regulation found requiring that the programs of States or the operation of schools benefiting by the program be nondiscriminatory.

Adult programs

Two important educational programs for adults, in addition to that provided by the National Defense Education Act, are vocational rehabilitation and public library services.

Vocational rehabilitation

The Department of Health, Education and Welfare has reported to the Commission that its policy is that vocational rehabilitation services should be available to all disabled persons, regardless of color. A study was submitted to the Commission of the white and nonwhite persons rehabilitated under this program and comparable ratios for the total civilian population. Nationwide the ratio of nonwhite to white persons rehabilitated has been running eight to ten percent higher in favor of the nonwhite population than the comparable ratio in the civilian population. In only four areas—Arizona, Louisiana, Mississippi and Puerto Rico—is there a consistent pattern in recent years of rehabilitating proportionately fewer nonwhites than might be expected on the basis of the racial composition of their population. The Department comments on this fact as follows:

> It is possible that the lowness of the ratio in these 4 areas may be due to differences in the need for service rather than to any problem of discrimination. However, we have no reliable information on the relative extent of need for vocational rehabilitation services among nonwhites and whites either nationally or in these areas. Nor do we have racial information on the total case load of persons receiving services (as compared with the number rehabilitated).[18]

The total cost of this program in 1956–57 was $34,847,954.[19]

Public library services for rural areas

In 1956 Congress adopted the Library Services Act authorizing an appropriation of $7,500,000 annually for five years for grants to States for the extension and improvement of public library services in places having a population of 10,000 or less. Funds are allotted to States on the basis of their rural population and must be matched by the State.[20]

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[18] *Op. cit. supra* note 14.
[19] *Ibid.*
[20] *Ibid.*

DIRECT AID TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION

The only Federal aid disbursed directly to designated public institutions of higher education by authority of statute seems to be Land-Grant Colleges and Universities under the Morrill-Nelson and Bankhead-Jones Acts.[21]

The statute authorizing financial assistance to such institutions provides that

> No money shall be paid out under Sections 321–328 of this title to any State or Territory for the support or maintenance of a college where a distinction of race or color is made in the admission of students, *but the establishment and maintenance of such colleges separately for white and colored students shall be held to be a compliance with the provisions of said section if the funds received in such State or Territory are equitably divided as hereinafter set forth:* . . .[22] [Italic supplied.]

The Commission directed a questionnaire to the Department of Health, Education and Welfare specifically with regard to its policy and practice in the distribution of funds to land-grant colleges and universities that maintain separate institutions for white and colored students. The Department has notified the Commission that under the authority of the statute, 17 States established and maintained separate land-grant colleges and universities for white and Negro students. "Today, 16 of the original 17 States continue the distribution of funds between the separate institutions, although some have opened their former all-white institutions to Negroes in some degree." [23]

The general policy of the Department applicable to grant programs in the field of education is summarized as follows:

> (1) Under the Supreme Court decision on segregation in reference to public elementary and secondary education, it is the Federal judiciary, and not the executive branch of the Federal government, which is to determine how compliance with the Supreme Court mandate is to be brought about and what constitutes compliance in good faith;
>
> (2) Judicial implementation of the Supreme Court decision, in the manner charted by the Court in its decree, and the meeting of the urgent, over-all educational needs of our country, can go forward at the same time;
>
> (3) For the executive branch to exercise the power, on the basis of its own determinations as to the requirements of the Supreme Court mandate to reserve or withhold funds necessary to progress in meeting educational needs, might interfere with such progress and would in the long run interfere with the responsibilities of the Federal judiciary.[24]

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[21] 7 U.S.C. 321–328.

[22] *Id.* at sec. 323.

[23] Department of Health, Education and Welfare reply dated July 1, 1959, to Commission Questionnaire, p. 12. The Department informed the Commission that the State of West Virginia has withdrawn designation of a separate Negro college and now has only one land-grant college.

[24] *Id.* at 6.

TABLE 20a.—*Disbursements to land-grant colleges maintaining separate colleges for Negroes, 1957–58* [1]

State:	*Total*	State:	*Total*
Alabama	$100,541	North Carolina	$110,518
Arkansas	89,048	Oklahoma	92,278
Delaware	73,173	South Carolina	91,118
Florida	97,644	Tennessee	102,835
Georgia	104,360	Texas	146,921
Kentucky	99,375	Virginia	103,104
Louisiana	96,769	West Virginia [2]	90,006
Maryland	93,372		
Mississippi	91,735	Total	1,692,245
Missouri	109,448		

[1] Department of Health, Education and Welfare, Office of Education, *Federal Funds for Education, 1956–57 and 1957–58*, p. 38.
[2] June 1959—only one land-grant college.

FEDERAL FINANCIAL AID TO HIGHER EDUCATIONAL INSTITUTIONS FOR SPECIFIC PROGRAMS AND SERVICES

Several Federal agencies implement particular educational programs, training of specialists in fields of importance to national defense and research vital to national security by agreement with higher educational institutions, both public and private. A few have been selected for brief description to illustrate the various types of programs.

National defense education graduate fellowships

124 public and private institutions in 48 States (including the District of Columbia and Hawaii) have been approved for participation in 1959–60. Initial appropriations total $5.3 million and cover one thousand fellowships which include an individual stipend and payment to the institution of $2,500 per fellow. The institution submits nominations to the Commissioner of Education.[25] All fellowships are for three years and a total of 5,500 are authorized for a four-year period beginning 1959–60. This program is administered by the Department of Health, Education and Welfare.

National Science Foundation summer institutes

Re-training programs were held by 126 public and private institutions for about 6,000 high school and 400 college teachers of science and mathematics in the summer of 1958. The government pays a stipend to the individual and tuition. The total cost of this program in the summer of 1958 was $6,800,000. Some 348 institutes are scheduled for the summer of 1959, with 18,800 teachers expected.[26]

[25] Department of Health, Education and Welfare release of June 4, 1959.
[26] *Op. cit. supra* note 1, at 193, and information supplied by National Science Foundation.

National Science Foundation research grants program

Research grants are awarded to highly experienced investigators, principally in public and private institutions of higher education, whose programs of research show promise of extending the frontiers of knowledge. The total obligations for this program in 1957–58 were $16,262,692. The Foundation estimates that 73 percent of grants is for salaries and that 32.4 percent of this sum is for salaries of research assistants which include graduate assistants enrolled in the grantee institution working toward a master's degree or a doctorate.[27]

Other research programs in educational institutions

The following programs appear to operate in the same manner as the National Science Foundation Research Grants Program described above:

Research Assistantships under research and development contracts: 10,000 to 15,000 persons, a substantial number of whom are graduate students. No itemized figure available. Department of Defense.[28]

Contract Research, Fellowships and Other Training: Atomic Energy Commission. $26,620,000 (1956–57).[29]

Aeronautical Research: National Advisory Committee for Aeronautics. $580,000 (1956–57).[30]

Medical education for national defense

The objective of this program initiated in 1952 is to improve medical school curricula in areas of importance to military medicine and surgery, and medical aspects of civil defense. The program costs $11,000 per school plus certain costs for the Office of the National Coordinator. Expansion is planned at the rate of ten new schools per year until all medical schools desiring participation are included. Fully implemented, the program would cost $750,000 per year. $405,000 was budgeted for 1958–59 for 55 medical schools.[31] This program is administered by the Department of Defense.

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[27] *Op cit. supra* note 1, at 195.
[28] *Op. cit. supra* note 1, at 109.
[29] *Op. cit. supra* note 1, at 19 and 175.
[30] *Op. cit. supra* note 1, at 19 and 190.
[31] *Op. cit. supra* note 6, at 109.

CHAPTER XI. EDUCATION: FINDINGS AND RECOMMENDATIONS

The Problem

In 1954, the Supreme Court of the United States held that compulsory racial segregation in public schools is a denial of the equal protection of the laws under the Fourteenth Amendment to the U.S. Constitution, and of the due process of law required by the Fifth Amendment. In so holding, the Court did not require racial integration in the schools. What the Court did hold is that publicly supported schools must be opened to all races on a nonsegregated basis.

The requirements of this declaration of constitutional principle have been stated clearly by the late Judge John J. Parker of the United States Court of Appeals for the Fourth Circuit in the case of *Briggs v. Elliott:*

> What it (the Supreme Court) has decided, and all that it has decided, is that a State may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the State may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches (132 F. Supp. 776 (1955).).

The Commission based its study of legal developments constituting a denial of the equal protection of the laws in the field of public education upon two fundamental premises:

(1) The American system of public education must be preserved without impairment because an educated citizenry is the mainstay of the Republic and full educational opportunity for each and every citizen is America's major defense against the world threat to freedom.

(2) The constitutional right to be free from compulsory segregation in public education can be and must be realized, for this is a government of law, and the Constitution as interpreted by the Supreme Court is the supreme law of the land.

The problem, therefore, is how to comply with the Supreme Court decision while preserving and even improving public education. The ultimate choice of each State is between finding reasonable ways of ending compulsory segregation in its schools or abandoning its system of free public education.

INFORMATION, ADVISORY, AND CONCLUSIONS SERVICES

Background

The Commission's studies, and particularly its conference with school officials from districts in border States and a few in the South

that have in some measure desegregated since 1954, demonstrate that when local school officials are permitted to act responsibly in adopting plans that fit local conditions the difficulties of desegregation can be minimized. A variety of plans have proved to be successful, ranging from the merger of the former Negro and white school systems into one integrated system (particularly in communities where the Negro population was small and the cost of maintaining separate systems considerable) to the gradual Nashville plan that began in the first grade and is proceeding at the rate of one grade a year, with voluntary transfer permitted to any child assigned to a school where his race is in the minority.

In *Shuttlesworth v. Birmingham Board of Education*, 358 U.S. 101 (1958), the U.S. Supreme Court upheld as valid on its face the Alabama pupil placement law on the assumption that the law would be administered in a constitutional manner. Eight Southern States have adopted pupil-placement laws as a means of meeting the test of nondiscrimination. This is another possible method by which compliance may be achieved.

In many instances desegregation has been used by the local community as the occasion to raise its educational standards. In many instances remedial programs have been adopted for the handicapped, and advanced programs established for gifted students. Such programs were described to the Commission at its Nashville conference by the superintendents from Wilmington, Del., Washington, D.C., and San Angelo, Tex. St. Louis, Mo., has adopted a similar program. It is important that any transition should not result in the lowering of educational standards for either the white or Negro student. If possible, it should result in an improvement of educational standards for both; a number of school officials report that this has already happened in their communities.

In the transition to a nondiscriminatory school system, a carefully developed State or local plan is better than a plan imposed by a court for the immediate admission of certain litigants, or a plan imposed by any outside agency. The Supreme Court and the Federal lower courts have made it clear that they will consider sympathetically any reasonable plan proposed in good faith. This seems to be an area in which the principle of States rights can most effectively express itself through local option in meeting this problem. If State governments do not permit local school officials to develop such plans for good-faith compliance, the effectiveness of the school system in the State as a whole will be impaired. By permitting such local option a variety of methods of transition can be developed that take into account the varying circumstances in different areas of the State.

Findings

1. The ease of adjustment of a school system to desegregation is influenced by many factors, including the relative size and location of the white and Negro population, the extent to which the Negro children are culturally handicapped, segregation practices in other areas of community life, the presence or absence of democratic participation in the planning of the program used or preparation of the community for its acceptance, and the character of the leadership in the community and State.

2. Many factors must be considered and weighed in determining what constitutes a prompt and reasonable start toward full compliance and the means by which and the rate at which desegregation should be accomplished.

3. Desegregation by court order has been notably more difficult than desegregation by voluntary action wherein the method and timing have been locally determined.

4. Many school districts in attempting to evolve a desegregation plan have had no established and qualified source to which to turn for information and advice. Furthermore, many of these districts have been confused and frustrated by apparent inconsistencies in decisions of lower Federal courts.

Recommendations No. 1(a) and 1(b)

Therefore, the Commission recommends:

1(*a*). That the President propose and the Congress enact legislation to authorize the Commission on Civil Rights, if extended, to serve as a clearinghouse to collect and make available to States and to local communities information concerning programs and procedures used by school districts to comply with the Supreme Court mandate, either voluntarily or by court order, including data as to the known effects of the programs on the quality of education and the cost thereof.

1(*b*). That the Commission on Civil Rights be authorized to establish an advisory and conciliation service to assist local school officials in developing plans designed to meet constitutional requirements and local conditions, and to mediate and conciliate, upon request, disputes as to proposed plans and their implementation.

ANNUAL SCHOOL CENSUS

Background

The primary problem of equal protection of the laws in the field of public education is desegregation of public school systems in which separate schools for white and Negro children have been maintained by compulsion of State law. The Commission's study of this problem necessarily required public school enrollment figures, by race of

students and type of school attended, for all school districts in the 17 States and the District of Columbia where compulsory segregation had been the rule.

The Commission found that the U.S. Office of Education of the Department of Health, Education, and Welfare, which formerly collected and published such information, ceased doing so with the school year 1953–54. It was necessary, therefore, to secure such data directly from State and local officials or from secondary sources. As a matter of policy, the keeping of records by race has been discontinued in the States of Kentucky, Missouri, Oklahoma, West Virginia, and in some parts of Maryland.

A study such as that of the Commission requires complete and authoritative factual data. But, because there is a possibility that school records of the race of students might be used in a discriminatory manner in recommendations to colleges and universities and to prospective employers, the Commission cannot request the maintenance of permanent school records by race.

Findings

1. No agency of the U.S. Government, other than this Commission, has collected data either on public school enrollment by race since the school year 1953–54 or on the existence of segregation or nonsegregation by policy or practice in the public schools of the nation.

2. The public school study of the Commission has been rendered difficult by the lack of such information within the Federal Government and by the policy, adopted by some States and school districts that maintained racially segregated schools immediately prior to May 17, 1954, to discontinue recording the race of pupils.

Recommendation No. 2

Therefore, the Commission recommends that the Office of Education of the Department of Health, Education, and Welfare, in cooperation with the Bureau of the Census of the Department of Commerce, conduct an annual school census that will show the number and race of all students enrolled in all public educational institutions in the United States, and compile such data by States, by school districts, and by individual institutions of higher education within each State. Further, that initially this data be collected at the time of the taking of the next decennial census, and thereafter from official State sources insofar as possible.*

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*COMMISSIONER JOHNSON:

I have agreed to this recommendation with the understanding that it does not suggest or require that public educational institutions maintain school records by race and that the recommended school census can be undertaken without maintenance of such records.

SUPPLEMENTARY STATEMENT ON EDUCATION

By Vice Chairman Storey and Commissioners Battle and Carlton

The portion of the report dealing with public education contains much interesting and valuable factual material. However, the text preceding the Findings and Recommendations is based largely on the experience of large cities and communities in "border" states which have, to a greater or lesser degree, integrated their schools. Limited consideration has been given to the various conditions of population and life in large areas of the country where the problem is most acute.

Further study and investigation should be made of areas where school integration efforts run counter to long-established customs and traditions that formerly had legal sanction.

This tremendously serious and complex problem will not be solved by hasty action but must have the most careful and sympathetic consideration, with due regard for the way of life of large numbers of loyal Americans.

PROPOSAL TO REQUIRE EQUAL OPPORTUNITY AS A CONDITION OF FEDERAL GRANTS TO HIGHER EDUCATION

By Chairman Hannah and Commissioners Hesburgh and Johnson

More than $2 billion a year of Federal funds go for educational purposes and to educational institutions. The principal recipients of these funds are the nation's colleges, universities, and other institutions of higher education. Whether tax supported or privately financed, they receive Federal grants and loans both for their general support and capital improvements, as well as for research projects, special programs, and institutes.

Discriminatory admission policies and other practices are known to exist in a number of such institutions. None of the Federal agencies administering these educational assistance programs require proof or an attestation of nondiscrimination by the institutions as a condition for the receipt of Federal funds.

With its duty to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution," the Commission was compelled to ask whether it is consistent for the Federal Government to aid and support educational programs and activities in institutions of higher education which are not open to all citizens on an equal and nondiscriminatory basis.

While Congress has not required such conditions for these grants, the operations of the Federal Government are subject to the constitutional principle of equal protection or equal treatment.

The Supreme Court has held racial discrimination in public education to be a denial of equal protection. In regard to public

institutions of higher education the courts have required the immediate admission of qualified students without discrimination. The reasons for the gradual elimination of racial discrimination in elementary and secondary schools do not obtain in the field of higher education. There, immediate equality of opportunity for qualified students of all races is possible and necessary.

Although the equal protection clause of the Fourteenth Amendment applies only to State action, "it would be unthinkable," the Supreme Court has held, "that the same Constitution would impose a lesser duty on the Federal Government."

We believe that it is inconsistent with the Constitution and public policy of the United States for the Federal Government to grant financial assistance to institutions of higher education that practice racial discrimination.

We recommend that Federal agencies act in accordance with the fundamental constitutional principle of equal protection and equal treatment, and that these agencies be authorized and directed to withhold funds in any form to institutions of higher learning, both publicly supported and privately supported, which refuse, on racial grounds, to admit students otherwise qualified for admission.

ADDITIONAL PROPOSAL BY COMMISSIONER JOHNSON

While joining in the above proposal, I recommend that the policy set forth apply to all educational institutions that receive Federal funds, including public elementary and secondary schools. My reasons are set forth in my closing statement at the end of this report.

SEPARATE STATEMENT ON CONDITIONAL FEDERAL GRANTS FOR HIGHER EDUCATION

By Vice Chairman Storey and Commissioners Battle and Carlton

We oppose the recommendation that Federal agencies be authorized to withhold all public funds from institutions of higher learning (public and private) which refuse, on racial grounds, to admit students otherwise qualified for admission for the following reasons:

1. The Commission has agreed that the preservation and improvement of education is a matter of great national interest and is a fundamental principle within which the problems of equal protection must be evaluated. Therefore, we cannot conscientiously endorse a program which might well undermine that principle.

2. Present problems of equal protection pertaining to education fall within the sweep of the Fourteenth Amendment, an area long since preempted by the courts. We cannot endorse a program of economic coercion as either a substitute for or a supplement to the

direct enforcement of the law through the orderly processes of justice as administered by the courts.

3. Such a proposal by this Commission—as a branch of the Federal Government—would drastically affect the administration of privately owned institutions of higher education. Such action goes beyond the scope of the Commission's duties.

4. Our staff studies were directed toward understanding and evaluation of equal protection problems in public and secondary schools, not private schools upon any level, and not institutions of higher education, whether public or private.

PART FOUR. HOUSING

Early in its deliberations the Commission decided that the question of discrimination in housing by reason of color, race, religion or national origin, and the role played therein by the Federal Government under the various Federal housing laws, should constitute one of its three main fields of inquiry. It undertook this inquiry pursuant to its duties under Section 104(a) (2) and (3) of the Civil Rights Act, namely, its duty to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution" and its duty to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution."

The legal criteria for the Commission's inquiry in the field of housing were necessarily found in court decisions interpreting the Constitutional promise of equal protection of the laws. In the field of housing the Supreme Court has ruled that any racial discrimination by public authorities in the form of racial zoning laws, or in the form of judicial enforcement of private restrictive racial covenants, is unconstitutional as a denial of the equal protection of the laws. [1]

The Court has also held that this rule of non-discrimination is the public policy of the United States and is applicable to the action and policies of the Federal Government. [2] Through its various housing programs—assistance for slum clearance and urban renewal, public housing, and mortgage insurance—the Federal Government plays a major role in housing.

In addition, many State and local governments have undertaken housing programs, and adopted laws and policies ranging from far-reaching laws against discrimination to laws or policies requiring segregation. The majority, however, have no laws, policies or programs expressly dealing with the problem of discrimination in housing.

The questions before the Commission, therefore, were: (1) whether the housing laws and policies of Federal, State and local governments are operating to deny the equal protection of the laws to any Americans, and (2) whether the Commission, in appraising Federal laws and policies, should recommend any changes in order to fulfill the promise of equal protection of the laws to all Americans.

[1] Buchanan v. Warley, 245 U.S. 60 (1917) ; Shelley v. Kraemer, 334 U.S. 1 (1948).
[2] Hurd v. Hodge, 334 U.S. 24 (1948).

What is at issue is not the imposition of any residential pattern of racial integration. Rather, it is the right of every American to equal opportunity for decent housing. There may be many Americans who prefer to live in neighborhoods with people of their own race, color, religion, or national origin. The right of voluntary association is also important. But if some Americans, because of their color, race, religion, or national origin have no choice but to grow up and live in conditions of squalor and in rigidly confined areas, then all of America suffers. If through the action of city, State, or Federal governments some Americans are denied freedom of choice and equality of opportunity in housing, the constitutional rule of equal protection and equal justice under law is being violated.

Or the question may be stated more positively. Is the Federal Government doing all that it can and should to promote freedom of choice and equality of opportunity in housing for all Americans?

Opportunities and freedom of choice in housing could be increased in several ways, all of which came within the scope of the Commission's study: the promotion of new housing developments for minority groups both in or adjacent to the present areas of minority-group concentration and in outlying areas; the promotion of new open-occupancy housing projects available to both members of minority groups and others who choose to live there; and the promotion of policies of equality of treatment in the housing market generally, so that builders and property owners may rent or sell and lending institutions make loans on equal terms to all in search of housing.*

Before the Commission could properly appraise Federal housing laws and policies it had to understand the problem with which these laws and policies were designed to cope. Therefore, the first aim of the Commission's housing study was to get a complete and accurate picture of the problem as it affects minority groups throughout the country. This problem, in turn, had to be seen in the light of the housing needs of the nation at large.

The first source of essential statistical information for this study was the United States Census of 1950 and the National Housing Inventory of 1956. The Bureau of the Census was most helpful in providing special housing statistics from their unpublished tabula-

*COMMISSIONER JOHNSON:

I believe that equal opportunity to housing and freedom of choice in housing can be promoted in many ways, but I do not believe that this goal can be attained through so-called minority housing. Such housing merely makes available to Negroes better housing in new or existing ghettos and does not give them the full range of choice enjoyed by most other American citizens. In no real sense can this be called equality of opportunity or freedom of choice.

tions obtained during the taking of the 1956 National Housing Inventory.[3]

Because the housing picture varies in every State in the Union, the Commission called upon its State Advisory Committees to assist in gathering information about the situation in their respective States. An extensive questionnaire was sent to each State Committee suggesting the kind of information needed. A number of Committees appointed subcommittees on housing or tried otherwise to make a survey of the problem in their States. The excerpts from State Advisory Committee reports, which follow each chapter in this section of the report, demonstrate their usefulness.

Officials and intergroup relations officers of the various Federal housing agencies were also consulted. Their co-operation was of great value.

The Commission decided to hold public hearings to get firsthand testimony from other housing officials and experts with a variety of views, including spokesmen for the housing industry, for the financing institutions, and for organizations concerned with discrimination in housing.

At these hearings and in the Commission's studies and field surveys, answers were sought to the following broad questions:

1. What is the factual situation with respect to the quantity and quality of housing at present occupied by or available to racial, national, or religious minority groups? How does this differ, if at all, from the housing situation of the majority?
2. What difficulties, if any, are encountered by minority groups in finding decent, safe, and sanitary housing? What accounts for any such difficulties?
3. To what extent, if at all, do patterns of residential segregation by racial, national, or religious groups exist, and what is the cause?
4. What are the effects of either inadequate housing for minority groups or of segregated housing, in terms of crime, juvenile delinquency, disease, interracial relations, public education, property values, the municipal tax base, and the general standards of city life?
5. What State and local laws, policies, and programs have been adopted to provide equal opportunity to adequate housing on a nondiscriminatory basis? What has been the experience under these measures?
6. What is the effect of Federal housing laws, policies, and programs on the housing patterns and problems of minority groups and on State and local housing programs? Particularly, what are the practices and effects in this respect of the three main constituents of the Federal Housing and Home Finance Agency—the Public Housing Administration, the Federal Housing Administration, and the Urban Renewal Administration?
7. What proposals regarding Federal housing laws and policies should this Commission recommend to the President and the Congress?

[3] See tables in Appendix of *Hearing before the United States Commission on Civil Rights, Housing,* vol. 2, Conference with Federal Housing Officials, U.S. Government Printing Office, 1959. (Hereafter referred to as Washington Hearing.)

The first Commission hearing on housing was held in New York City on February 2 and 3, 1959. Thirty-six witnesses were heard in two full days of hearings, presided over by Commissioner Hesburgh. New York City was chosen for the first hearing not only because it is the nation's largest city but also because city and State legislation combined to give it the nation's most extensive antidiscrimination laws and programs.

After field surveys by its staff, the Commission decided to hold additional public hearings on housing in Atlanta, where the local rule of "separate but equal" is being followed, and in Chicago, where there are no effective laws respecting racial housing patterns and problems.

At the Atlanta hearing on April 10, 1959, presided over by Commissioner Carlton, 15 witnesses testified and Commission members were taken for a two-hour view of the city by Mayor William B. Hartsfield. At the Chicago hearing, held on May 5 and 6, 1959, with Commissioner Hesburgh presiding, 33 witnesses were heard.

Following these regional hearings, members of the Commission met on June 10, 1959, in executive session with Mr. Norman P. Mason, Administrator of the Housing and Home Finance Agency; Mr. Richard L. Steiner, Commissioner of the Urban Renewal Administration; Mr. J. Stanley Baughman, President of the Federal National Mortgage Association; Mr. Albert J. Robertson, Chairman of the Federal Home Loan Bank Board; and with spokesmen for the Federal Housing Administration, the Public Housing Administration, the Voluntary Home Mortgage Credit Program, and the Veterans Administration.

The transcripts of these hearings, which contain much valuable information, are printed as appendices to this report and may be obtained from the Commission.[3a]

In addition, before completing this study and making its recommendations, the Commission had the benefit of a two-day exchange of views with delegates from each of the Commission's 48 State Advisory Committees. This meeting on June 9 and 10, 1959, was of real value in helping the Commission weigh some of the complexities involved.

The Commission is aware that in the period of 16 months which it had to conduct this study and prepare its report, it could not hope to present the full picture or to find all the answers. What it has seen and heard and learned convinces it that housing is one of the most important and urgent aspects of civil rights. Its housing study also demonstrated that civil rights is truly a nationwide problem. With nearly half of the nation's Negroes now living in the North and West, four-fifths in urban areas, and with a large influx of Puerto Ricans to New York and other cities, this is clearly not a matter vexing the Southern

[3a] Commission on Civil Rights, 726 Jackson Place, N.W., Washington 25, D.C.

region alone. The "black belts" of Negro residential areas now spreading in most northern and western cities result in schools that are segregated in fact though not by law. And the value of the right to vote is clearly diminished in the social demoralization that goes with slums, congestion, and blighted areas.

As Governor Rockefeller reminded the Commission in New York, when we speak of housing, we are talking about the American home.[4] We are also talking about the promises of the Constitution. Like charity, Commissioner Hesburgh said in opening the Commission's New York housing hearing, the justice sought through equal protection of the laws should begin at home and in homes. He added:

> If certain Americans, because of their color, race, religion or national origin, grow up and live in conditions of squalor, closed off from equal opportunities to have good homes and good neighborhoods, then all of America is the poorer and the promise of the Constitution—the promise of the American dream—is not really being fulfilled.[5]

When we speak of housing we are also talking about the face of America, now and in the future. Already about 100 million Americans, or 60 percent of our population, live within the 168 standard metropolitan areas, and soon over two-thirds of our people will live in these areas.[6] Urban renewal and redevelopment is thus reshaping the face of the nation. As Commissioner Hesburgh said in New York, "That face must have the beauty and dignity and harmony of the Constitution, not the face of slums and discrimination and chaos."[7]

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[4] Regional Hearings, p. 8.

[5] *Id.* at 5.

[6] Census Population Report P–20, No. 71, Dec. 7, 1956. As of March 1956 it was estimated that over 96 million people lived in standard metropolitan areas, an increase of over 12 million in that category since April 1950. On August 24, 1959, the Census Bureau reported that 64 percent of the 51.3 million households were in cities or suburbs, 26 percent in the country but not on farms, and 10 percent on farms.

[7] Regional Hearings, p. 5.

A. America's Housing Needs and Problems

CHAPTER 1. THE GENERAL HOUSING CRISIS

Questions of the denial of the equal protection of the law in housing by reason of color, race, religion, or national origin should first be seen within the context of a general crisis in housing vexing the whole country.

The first fact in appraising racial problems in housing is that in probably every city there are, as the Mayor of Atlanta stressed, slums.[1] Slums and blighted areas are plaguing each city that the Commission has studied, regardless of the race, color, religion, or national origin of the inhabitants. Most lower-income Americans, both whites and nonwhites in most cities lack adequate opportunity to live outside these substandard areas.

It was suggested to the Commission that "the poor will always be with us" and that there is "no prospect of adequate housing for the poor in the foreseeable future".[2] But the U.S. Constitution was adopted in order to establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to all Americans. Certainly these purposes remain unachieved if some Americans have no choice but to live in slums.

Congress has declared the goal of Federal housing policies to be "a decent home and a suitable living environment for every American family," with "the elimination of substandard and blighted areas".[3] Yet despite this national goal, despite the national wealth, and despite the science and technology of the 20th century, the mounting housing needs of the American people are not being adequately met.

The poor have always been with us, but until recent times the frontier was an ever-present outlet for the pressure of increasing population. But now there is little open land left where a man can start a new life on his own homestead. Industrialization has drawn men to the cities, where the factories and jobs are, but where problems of housing are far more complicated. The cities are full, and yet the great migration from rural to urban areas continues, and population growth compounds the problem. The other great migration from central city to suburbs adds further complications. The editors of *Fortune* have called this crisis *The Exploding Metropolis.*[4]

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[1] Regional Hearings in New York, Atlanta, and Chicago before the United States Commission on Civil Rights, Housing, U.S. Government Printing Office, 1959, p. 447. (Hereafter this publication will be referred to as Regional Hearings.)

[2] *Id.* at 490.

[3] Housing Act of 1949, Public Law 171, 81st Congress.

[4] The Editors of Fortune, *The Exploding Metropolis,* Doubleday Anchor Book, 1958.

Lower income Americans who move to the cities may find higher paying jobs but their prospects for decent housing will usually be dim. For there is simply not enough housing available for them. In New York, Atlanta, and Chicago the Commission has seen for itself and has heard expert testimony concerning this shortage of decent low-cost housing. One New York State official described it as a "housing famine" in that State.[5]

In New York City there are an estimated 600,000 families, or two million citizens, occupying dwelling units that are below standard for wholesome and healthful living.[6] Housing experts and city officials testified that this lack of sufficient housing for lower-income citizens is a nationwide fact of primary significance to the Commission's study.[7]

The Commission has also collected information charting the growth in urban population that largely accounts for both slums and the shortage of low-cost housing. Some 66 percent of all Americans, or over 120 million people, now live in cities; and it is estimated that in the next 20 years our urban areas will have to house some 72 million more people, an increase of more than 50 percent.[8] In the Atlanta metropolitan area, for instance, the population increased from about 700,000 in 1950 to about one million in 1959, a growth of over 40 percent in nine years.[9] This is the result both of the natural rate of population increase, now about 1.5 percent a year, and of the continuing vast migration to metropolitan areas.[10]

It is estimated that some five million Americans move each year from one State to another.[11] Many of these migrants cannot afford good housing in the suburbs. Hence, they fill existing slums and overflow into neighboring areas, creating new slums. As a leading New York real estate developer testified: "When the owners find they have a captive group who can move nowhere else . . . they are not under a competitive requirement to maintain their dwellings properly, and there is almost understandably considerable tendency to

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[5] Regional Hearings, p. 147. See also statement of Mayor Daley of Chicago, *id.* at 621. The 1950 Census of Housing indicated that there were more than 16 million dwelling units throughout the United States that were classified as substandard. More than 10½ million of this total either lacked a private toilet or bath, or had no running water. More than 3.7 million were both dilapidated and lacked private bath facilities or running water. (Volume I, General Characteristics, Part 1—U.S. Summary, Table 7, 1950 Census of Housing.)

[6] *Id.* at 321.

[7] *Id.* at 123, 124, 143, 254.

[8] Regional Hearings, pp. 123, 290.

[9] *Id.* at 446, 478, 486.

[10] Census Bulletins P–25, No. 195 and P–20, No. 71. The Census Bureau estimates that 85 percent of the 14.7 million increase in population between 1950 and 1956 was accounted for by the increase in the population of the 168 standard metropolitan areas.

[11] Regional Hearings, p. 385.

milk these properties." [12] The result is a vicious circle, for when landlords crowd tenants into apartments, charging high rents and neglecting maintenance and repair, the tenants have little incentive to do other than mistreat their dwelling quarters. Then, as this real estate leader testified: "the city . . . tends to throw up its hands and write off that section and provide it with inadequate facilities." [13]

Moreover, the migrants who come from low-income rural backgrounds find adjustment to city life difficult, and their own maladjustment thus becomes an additional factor in the spread of slum conditions.[14] Race and nationality are not necessary factors in this situation. These social and housing problems have been created in some cities by the large influx of rural white people from the South, just as a similar influx of European migrants once filled and expanded our city slums.[15]

But the vicious circle widens. For as the slums in the central sections of the cities fill with the lowest income strata, in large part from the recent migrants, the more fortunate citizens move to the suburbs to escape the growing squalor and demoralization of the inner city. This flight to the suburbs began before great concentrations of Negroes in the cities became a problem. It is taking place in every metropolitan area whether or not a large Negro concentration is involved.[16]

As the suburbs of upper and middle-income families grow and occupy most of the available outlying land, the metropolitan area further divides itself into two cities. Suburban communities enact zoning regulations to preserve their pleasant residential character. By requiring lots or homes of considerable size, these communities make it difficult for low-cost homes to be constructed outside the central city.[17] With the suburbs thus forming a practically impenetrable ring around the city, the expanding lower-income population in the city is trapped. Increasing overcrowding then breeds more slums, which in turn drive more upper- and middle-income residents to the suburbs. Thus the central city is increasingly inhabited by lower-income residents who require greater and more costly social services but who pay less taxes than those who leave.

The consequent loss in municipal revenue makes it difficult, if not impossible, for the city alone to prevent the further spread of slums.

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[12] *Id.* at 283.

[13] *Id.* at 283–84.

[14] *Id.* at 123.

[15] *Id.* at 123–24, 155, 688–89.

[16] *Id.* at 124, 286, 480, 874–75. In the 168 standard metropolitan areas the population of the metropolitan areas *outside* the central cities is estimated to have increased by 29.3 percent, or from 34.6 million to 44.8 million, between 1950 and 1956, while that of the central cities increased by only 4.7 percent, or from 49.1 million to 51.4 million. Census Report P–20, No. 71.

[17] Regional Hearings, p. 444.

For the cost of slum clearance is immense, and low-income housing, built on the resulting high-cost land, can rarely be self-supporting.

To make the situation worse, housing is one of the few basic commodities in the American market, perhaps the only one that is so important, where mass-production technology and corporate ingenuity have not yet succeeded in producing a low-cost product available to nearly every consumer. The lower-income city dweller is seldom offered decent housing within his means.

The way out must take account of all factors of the housing crisis, since no single one is a sufficient cause. Slum clearance without the construction of additional housing in which to relocate the slum dwellers results only in slum spreading.[18] For slum dwellers are then driven into other slums or into areas that, through overcrowding, soon become slums. As one housing expert noted, "There is nothing that slum clearance, itself, can do that can't be accomplished more efficiently by an earthquake." [19]

Similarly, efforts to assist migrants to adjust to city life through education and social welfare services will not make much headway if these families have little hope of finding decent homes in decent neighborhoods. People can hardly be asked to adjust to a life of squalor. On the other hand, suburban and higher-income urban neighborhoods cannot be expected to welcome low-income residents unless serious efforts are made to help them break the habits learned in the slums. Nor can higher-income residents be attracted back to the central city in substantial numbers unless slums and the demoralization that goes with them are checked, if not ended.

But though improvement in any single factor would not alone solve the problem, there seems to be agreement that efforts to overcome the shortage in decent low-cost housing are central to any attempt to break the vicious circle described above.[20]

As far as can be predicted, the migration to metropolitan areas, the growth of population, and the movement to the suburbs are fundamental processes that will go on for years. However, the shortage in housing for lower income Americans can presumably be overcome by a combination of sound planning, public action, and private initiative. And this would surely affect all the other factors. It would permit slum clearance and the enforcement of city codes against overcrowding and dilapidation to proceed without disastrous consequences for the persons displaced. It would permit expanding industry to continue to draw workers to the cities without producing new slums and social demoralization. It would encourage upper-income residents to

[18] *Id.* at 251.
[19] *Id.* at 156.
[20] *Id.* at 11, 14, 152–53, 387.

remain in or to return to the inner-city without fear of being engulfed by slums. It would narrow the widening gap between high suburban standards and urban squalor. It would increase the range of opportunities for housing open to all the people.

But it is at this point and in this context that the problem of discrimination in housing by reason of color, race, religion, or national origin rises to block a rational solution to the housing crisis. As shown below, racial discrimination enters into and magnifies every one of the factors producing the crisis. It is important to see the housing problems first in their general shape in order to keep their racial aspects in perspective. However, to see the nation's housing crisis in its full dimensions it is necessary to understand the special housing needs and problems of minorities, particularly of the racial minorities.

It may be well to note that the United States is not alone in facing such problems. The denial of opportunities to acquire land and decent housing in the great industrial metropolitan communities to many of those who most need it is, as an international specialist in housing testified in the New York Hearing of the Commission on Civil Rights, "a trend which is taking place not only in the United States but everywhere. The hinterlander is moving into the cities of the world and he is being met by all sorts of resistance because he is different." [21] The Secretary General of the United Nations, in a recent report on world developments, described the worldwide housing crisis in terms of the shortage of housing for lower-income groups. He said that "little or no progress can be reported in the attempt to keep the supply of housing, especially low-cost housing, on a level with the needs of growing populations." [22]

That this problem is vexing the whole human race is no reason for discouragement or inaction. Rather it is a challenge to the American spirit.

State Advisory Committee Reports

While most of the reports of the Commission's State Advisory Committees focused on minority housing problems, some information was supplied on the general housing shortage. The facts, statistics and opinions in the following excerpts are those given by the State committees and have not been verified by the Commission.

CALIFORNIA

Los Angeles

". . . there are 3,000 families arriving in Los Angeles each month."

". . . city property is fast becoming unattainable to the middle class family—land values, tax rates are placing property far beyond his purchasing power; hence they must move to areas they can afford or become tenants. The area of tenants is decreasing as scarcity in land for multiple dwellings is also prevalent."

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[21] *Id.* at 155, 424–25.

[22] *N. Y. Times*, April 27, 1959.

DELAWARE

"In this modern age of industrialization and technological advances one can hardly envision a home without running water of some kind. Nonetheless, this is still a fact in Delaware, and characterizes as many as 3,654 rented dwellings."

ILLINOIS

Chicago

Out of a total of 1,164,768 dwelling units, 176,459 are rated as substandard.

INDIANA

South Bend

". . . according to the 1950 census, South Bend stands high in regard to housing conditions when compared with metropolitan areas of Dayton, Evansville, Fort Wayne, Indianapolis, Louisville, and Peoria. . . . Within the South Bend city limits, 28,500 out of a total of 35,150 dwelling units in 1950 had private bath and toilet, piped hot water, and were not dilapidated. Another 1,700 units had all the facilities with the exception of hot water."

KANSAS

Kansas City

". . . it is difficult to find land and to build housing for people in poor economic circumstances, minority or not. Land is $3,000 an acre and only a limited number of structures can be built on each acre."

Lawrence

". . . the quality of Negro housing was judged by competent observers to be not greatly inferior to that of white families of the same economic level. However, a good proportion of both white and Negro housing at the same level in east and north Lawrence would probably rate as substandard."

MARYLAND

We recognize "that equal opportunity to obtain good housing will be most readily achieved when the supply of housing is adequate for the whole population."

NEW JERSEY

"While we may take some pride in our public housing, the private housing available to racial and low-income groups is steadily worsening and deteriorating. Such persons, with few exceptions, cannot afford to buy houses at today's inflated prices and so they are confined to rentals in sub-standard hovels and often at staggering monthly or weekly rates. Every large city has its slums and slums within slums. Landlords refuse to make any improvements, and tenants are afraid to complain lest they be ousted from their quarters, or have their rent further increased. One remedy is to have a City Housing Court, as in Newark, where both tenants and public officials can summon an indifferent landlord into court. The second is to have these hovels inspected regularly by local sanitary authorities and fire departments and compel owners to make necessary and vital improvements. This latter course is more honored in the breach than the observance, but it should be pushed to the limit. It would make for decent housing even in poor neighborhoods. Compel the owner to fix up or close up!"

NEW YORK

There is a "serious lack of federal provisions for housing accommodations for the large segment of the American population which falls within the income range between the level required for low rent public housing and that required for the so-called middle-income housing program. This lack points to an urgent need for a supplemental program to provide upper low-income and low-middle income housing."

". . . the severe shortage of middle-income housing accommodations complicates the effort to end discrimination and segregation. Although New York State probably has a broader middle-income housing program than any other state in the nation, the supply is far less than the demand. Whites and Negroes in the vast middle income group compete for an inadequate housing supply; and in this competition, Negroes are hampered by their color."

OREGON

Eugene-Springfield area

"Their [the Negroes'] situation is probably not materially different from that of whites of similar socio-economic level except that within their range of financial capabilities the alternatives open to them are more limited."

WEST VIRGINIA

"It should be noted, however, that substandard housing in West Virginia is not limited to minority groups. It is a very real problem to all races. This can be traced in most cases to very low incomes which make the cost of adequate housing prohibitive."

CHAPTER II. SPECIAL HOUSING NEEDS AND PROBLEMS OF MINORITIES

1. QUALITY AND QUANTITY OF HOUSING OCCUPIED BY OR AVAILABLE TO MINORITIES, COMPARED WITH THAT AVAILABLE GENERALLY

The 1950 United States Census of Housing and the 1956 National Housing Inventory by the Bureau of the Census both graphically document the inferior quality and quantity of housing for the nonwhite minority in this country. Statistics tell much of the story.

In 1950 nearly 70 percent of nonwhite families lived in dwellings that were dilapidated or had inadequate plumbing.[1] This is nearly three times the proportion of white families then living under such conditions.[2] More than 60 percent of all urban Spanish-name households in the Southwest were in these substandard dwellings, against less than 20 percent of urban white households. Moreover, a third of all nonfarm dwellings occupied by nonwhites had more than one person per room, and half of such dwellings occupied by Spanish-name households were "crowded", but only one-eighth of all such white-occupied dwellings were similarly crowded.[3] "Overcrowding" was four times as great for non-whites as for whites.[4]

The Commission's staff studies of the 1956 National Housing Inventory showed that such conditions still existed in the nation's 168 standard metropolitan areas. Over 23 percent of the nonwhite owner-occupied dwelling units either lacked plumbing facilities or were dilapidated, as contrasted to 6 percent of the white owner-occupied dwelling units in the same condition. Some 42 percent of the non-white renter-occupied dwelling units either lacked plumbing facilities

[1] *"Dilapidated"*—"A dwelling unit was reported as dilapidated when it had serious deficiencies, was rundown or neglected, or was of inadequate original construction, so that it did not provide adequate shelter or protection against the elements or endangered the safety of the occupants. A dwelling unit was reported dilapidated if, because of either deterioration or inadequate original construction, it was below the generally accepted minimum standard for housing and should be torn down or extensively repaired or rebuilt." National Housing Inventory 1956, U.S. Dept. of Commerce, Bureau of Census, 1958, Vol. I, pt. 1, p. 5.

[2] *Report of the President's Advisory Committee on Government Housing Policies and Programs,* 1953, pp. 256–7. Some 31 percent of non-farm homes occupied by non-whites were dilapidated compared to some 6 percent for whites (Washington Hearing, p. 7).

[3] *Where Shall We Live,* Report of Commission on Race and Housing, U. of Cal. 1959, pp. 4–5.

[4] Washington Hearing, p. 7. *"Overcrowded"*—"An average of more than 1.5 persons to each room is often considered an effective statistical measurement of overcrowding in dwellings. By that criterion, 1 non-white household out of every 5 (20.2 percent) in the U.S. was overcrowded whereas only 1 out of every 20 (4.7 percent) white households was overcrowded." *Non-white Population Changes,* FHA Division of Research and Statistics (Washington Hearing, pp. 175–181, 180).

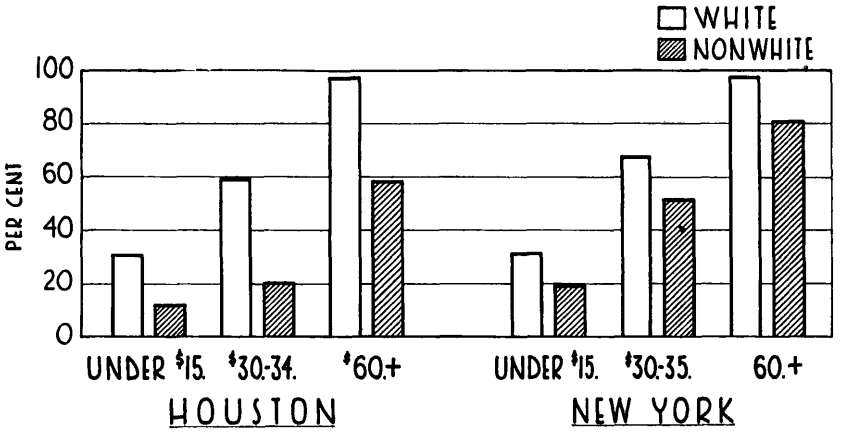

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CHART XVI. Rented Dwellings, Percent Standard by Gross Rent and Color (Houston and New York)

or were dilapidated, as contrasted to 14.7 percent of the white renter-occupied dwelling units in the same condition.[5]

Conditions vary from city to city but the gap between the quality and quantity of housing available to nonwhites and to whites appears to be nationwide. Practically every State Advisory Committee report noted this.

Further evidence of this gap between housing conditions for whites and nonwhites was presented in the Commission's public hearings. The charts reprinted here, based on Census figures, were introduced at the New York Hearing to illustrate some of the findings of the extensive three-year research of the Commission on Race and Housing, headed by Mr. Earl B. Schwulst, president of the Bowery Savings Bank. These charts and reports of the Commission's State Advisory Committees confirm the statement of the Administrator of the Federal Housing and Home Finance Agency, Mr. Norman Mason, that minorities are "generally able to buy less housing value and secure less home financing service on poorer terms per dollar than whites." [6]

Charts XVI and XVII compare the percentage of rented dwellings classified by the Bureau of the Census as standard for whites and nonwhites by different rental brackets in four cities: Houston, New York, New Orleans, and Detroit. In each case, the whites are found to have a much higher proportion of standard dwellings in the same rental bracket. Although the differential is less in New York and

[5] See heretofore unpublished tables from the Census Bureau's 1956 National Housing Inventory printed in the appendix of the Commission's Washington Hearing.

[6] Washington Hearing, p. 7.

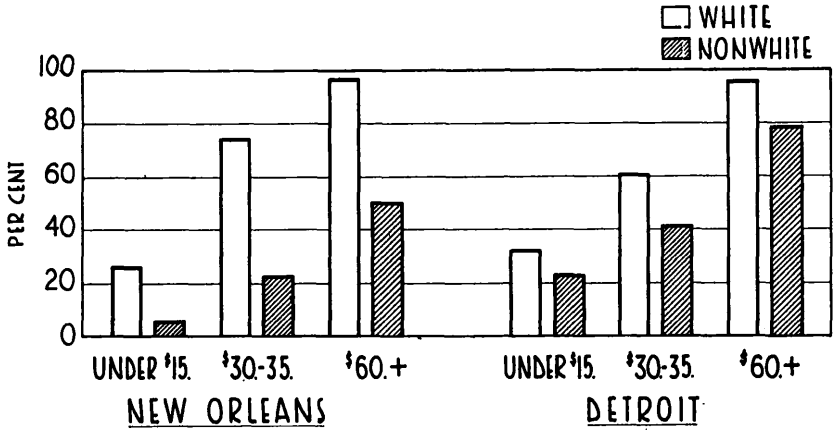

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CHART XVII. Rented Dwellings, Percent Standard by Gross Rent and Color (New Orleans and Detroit)

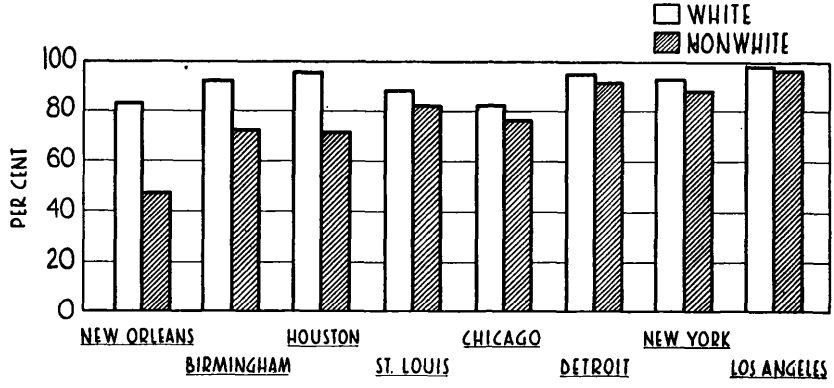

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CHART XVIII. Owned Dwellings Valued at $6,000–$7,500 Percent Standard by Color

Detroit than in the southern cities, the nonwhite in each case gets less for his rental dollar than the white.

Chart XVIII shows that in eight major cities the nonwhite buyer of a house valued at $6,000–$7,500 also gets less for his dollar than the white person who buys a house in the same category, although the percentage of nonwhite-owned dwellings in this category that are standard is closer to the white percentage than in the case of rented units.

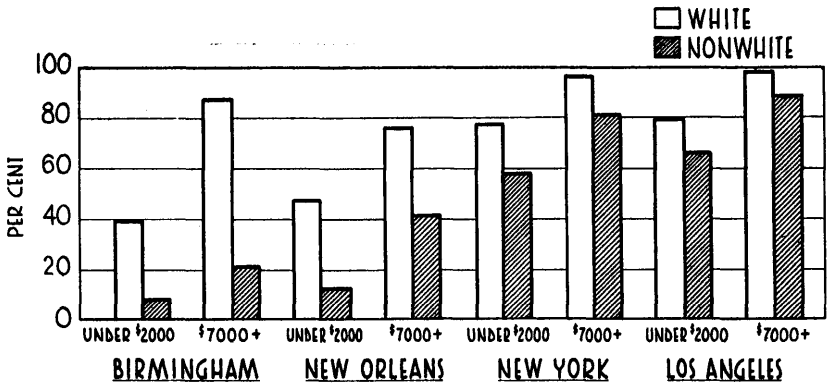

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CHART XIX. Rented Dwellings, Percent Standard by Income and Color

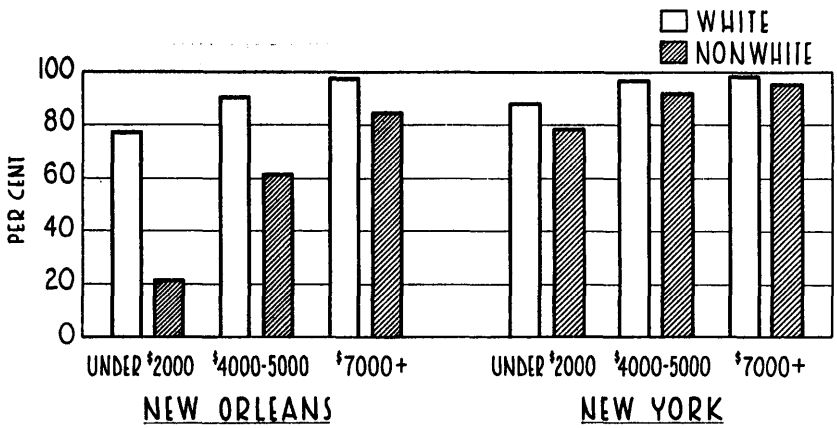

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CHART XX. Owned Dwellings, Percent Standard by Income and Color

Chart XIX shows that in Birmingham, New Orleans, New York, and Los Angeles the nonwhite in every income group gets considerably less standard rental housing in relationship to his overall income position than does the white renter of similar income.

Chart XX shows that in New Orleans the same is true of owned dwellings, while in New York the differential between whites and nonwhites in this situation is relatively small.

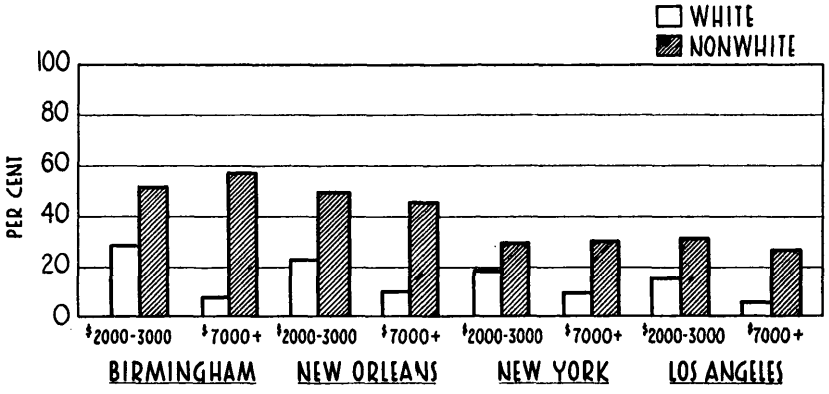

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CHART XXI. Rented Dwellings, Percent With 1.01 or More Persons Per Room by Income and Color

Chart XXI shows that in the above four cities there is substantially more overcrowding in rented dwellings of nonwhites than of whites in the same income category.[7]

Evidence introduced in the Commission's hearings bears out these general conclusions. In Atlanta, for instance, the whites who comprise 64 percent of the population occupy 84 percent of the developed residential land, and the Negroes with 36 percent of the population live on 16 percent of this land.[8] In New York State, according to a State official, surveys in various cities indicate that the degree of Negro overcrowding, already several times higher than white overcrowding, has increased sharply since the 1950 Census.[9] In Chicago in 1957, despite improvement over 1950, some 35 percent of nonwhite households were estimated to live in substandard dwelling units, compared with 16 percent of the white households. Over 50 percent of all housing units in the almost solidly nonwhite area were substandard whereas substandard housing for the city as a whole was about 15 percent.[10]

This is not surprising in view of the rate of construction of new homes for nonwhites as contrasted to that of whites. It is estimated that between 1935 and 1950, over nine million new private dwelling units were constructed, of which about 100,000, or slightly over 1 percent were available to the nonwhite 10 percent of the population. While Negro urban families occupied 11 percent more dwelling units

[7] Regional Hearings, pp. 36, 41–45.
[8] *Id.* at 479–80, 486.
[9] *Id.* at 149.
[10] *Id.* at 634–35.

in 1950 than they did in 1940, this increase did not keep pace with the rapidly growing urban Negro population.[11]

Another indication of the unequal housing conditions for whites and nonwhites is the high proportion of nonwhites in areas being cleared under slum clearance and urban redevelopment programs. Nonwhite families in such project areas have ranged from 65 percent as of March, 1953 to 55 percent in 1958.[12] This is just another way of saying that a high proportion of slum-dwellers are nonwhites. The former Housing and Home Finance Administrator, Mr. Albert Cole, estimated in 1954 that at least two-thirds of the slum families in our major cities are from minority groups.[13]

All of this only demonstrates that while the shortage of low-cost housing is in some sense the cutting edge of the nation's housing crisis, it is the nonwhite minority that bears the brunt.

State Advisory Committee Reports

Reports from the Commission's State Advisory Committees tend to confirm the above facts. The facts, statistics, and opinions in the following excerpts are those given by the respective State committees and have not been verified by the Commission.

Arizona

"Only Negroes have housing restriction problems. . . . Other minority groups, including lower class whites, find quality and quantity housing available according each to their financial status."

California

Los Angeles

"Negro families have never been able to secure adequate housing cheaply and at moderate prices. . . . Negro families usually have been obliged to buy homes in order to have places in which to live and to pay prices which often necessitate the taking in of boarders to help defray the cost of the house. Even rentals are high for the families who do not buy so that in 1950, almost 15 percent of the Negro population was composed of boarders occupying only a part of a larger home. The homes in which Negro families live are rarely new, but usually 20 to 30 years old, and of an age and quality typical of older eras.

"Spanish-American housing areas continue to be characterized by high percentages of rental-occupied, overcrowded, cheap, dilapidated housing badly in need of repairs. Even in 1950, rentals rarely exceeded $30 per month and more often than not averaged only $12 monthly. . . . It is apparent that the homes have deteriorated further since 1950. . . . Mexican-American families have been found to be occupying homes in the poorest condition and most in need of major repairs."

Colorado

"Adequate housing and housing by choice and qualification is the most critical of all civil rights problems in Colorado faced by minority group members.

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[11] *Equal Opportunity in Housing,* American Friends Service Comm., May 1955, pp. 6–7; and Presentation to the President by National Urban League, June 18, 1954.

[12] Washington hearing, p. 12.

[13] Talk before Economic Club of Detroit, February 1954.

"Because the minority group member cannot compete in the open market, they usually have to pay more for less, make a larger downpayment, and in many instances, resort to a second mortgage and even a third mortgage in order to buy on the perimeter or on many occasions within the ghettoed area."

Denver

"The great majority of Denver's Negroes—one estimate is 95 percent—live in a ghetto area."

DELAWARE

"Poor housing for Negroes is, perhaps, the most obvious of all racial differentials that exist between white and colored people in Delaware."

Of 7,000 dwelling units classified as dilapidated in the State, 5,500 are Negro-occupied.

For the decade 1940–50, the proportion of dwelling units to Negro population declined while the corresponding figure for the white segment increased.

". . . colored residents pay more rent and higher purchasing prices for substandard housing accommodations . . . . Not only are economic rents higher for Negroes but they pay more in interest and other charges for the houses they buy.

"Everywhere there are new developments in the State, both private and Government-subsidized, and hardly any are available to Negroes."

GEORGIA

"The committee felt that Atlanta presents a unique situation and that as a whole the remainder of the State would be revealed as low in Negro home ownership, heavy in relatively high-priced, substandard rental quarters."

INDIANA

"The area of discrimination in housing in Indiana is probably the greatest blight we are facing in the problems affecting the Civil Rights Commission."

Fort Wayne

Sixty-five to seventy percent of nonwhite occupied dwellings are dilapidated. In one substandard area consisting of 2,000 homes, 98 percent of the residents are nonwhite.

The period of the last 5 years would show about 5,800 new homes having been built. Of that number, about 50 are occupied by Negroes.

Indianapolis

"Real estate men generally agree that sales to nonwhites are on an inflated price basis due to the scarcity of the market and to lack of substantial downpayments and consequent high financing.

"The Executive Director of the [Redevelopment] Commission reports that 7,500 persons have or will be displaced through redevelopment programs. Of these 1,470 are white and 6,030 are nonwhite."

South Bend

"During the last 5 years, less than 2 percent of the new housing supply in South Bend or Mishawaka has been available to Negroes, on an open occupancy or segregated basis. . . ."

Of 62 families to be relocated by the South Bend Housing Authority, 57 are nonwhite. ". . . about 35 families . . . will need help in relocation. Most of these, or almost 98 percent are Negro families."

KANSAS

"Probably the area of housing is the area where the lines are more sharply drawn than in any of the other areas of discrimination. There are in existence more flagrant denials of civil rights in the area of housing."

Wichita

". . . in 1950, the Negro population suffered from a decisive disadvantage in the quality of housing available to them. There was twice as much overcrowding in the Negro district (10 percent with more than 1.5 persons per room compared with only 4 percent for the city as a whole), three times as much doubling up; twice as many houses without private baths or dilapidated, four times as many without running water (25 percent versus 6 percent), twice as many without central heating and four times as many with no mechanical refrigeration. In most of the Negro districts, the houses were quite old and in two tracts two-thirds of the houses had been built prior to 1920. The average in the Negro district was about $4,750 compared with $9,450 in the rest of the city. . . ."

MARYLAND

Baltimore

In 1950, 48.7 percent of all nonwhite occupied units were substandard. This is four times the corresponding figure of 12.8 percent for white-occupied homes. Eighty-three and nine-tenths percent of Negro dwellings are located in blighted areas whereas 21.5 percent of white-occupied dwellings are similarly located.

There is three times as much overcrowding among the Negro as among the white population (Baltimore Housing Authority, 1950).

In 1940, Negroes occupied 17.2 percent of available housing while constituting 19.4 percent of the population. In 1950, Negroes accounted for 23.8 percent of the city's population and occupied 19.4 percent of the available housing. The population increase was 4.4 percent, but Negro occupancy increased only 2.2 percent (Baltimore Housing Authority, 1950).

During the last 15 years, 100,000 units were built by private concerns. Only 1 percent was available to Negroes. Between 1946 and 1956, less than 100 new units were built by private interests for the minority market.

The Negro's housing dollar has less value than the white person's.

MASSACHUSETTS

Boston, Springfield, and Worcester

". . . [while] the 'newest' sections of the cities are still old, it is the oldest section that nearly always provides most of the minority housing and 60 percent of the Negroes live in these substandard areas [i.e.], areas which would qualify for urban renewal programs of redevelopment rather than rehabilitation or conservation."

MISSOURI

"It is readily estimated that at least 70 percent of the members of minority groups live in substandard housing . . . and that they are victims of slum clearance which ironically has meant in most cases 'Minorities Clearance'."

Kansas City

Officials issued 106 building permits for single houses to Negroes during the period 1940 to 1958, and 100 new houses were actually built for Negroes during the 10-year period 1946 to 1956.

St. Louis

"The 1950 census shows that between 1940 and 1950, the percent of dwelling units occupied by nonwhites increased from 12.5 to 15.5 percent (3 percent). In the light of the interim nonwhite population increase of 4.6 percent of the total population, the growing deficit becomes clear."

Thirty percent of the city's population is Negro, yet the Negroes occupy only 16 to 20 percent of the total housing supply.

"Historically, Negroes pay from 10 to 25 percent more for new housing than do whites."

NEBRASKA

Omaha

"Based on a general knowledge of conditions and not on any statistical study, it has been estimated that . . . 50 percent of the Negro population live in substandard housing; 90 percent of the Indian population are similarly housed. . . ."

"Negroes have not generally shared in new housing that has been built and offered for sale in the past 3 years, 1956–59."

NEVADA

Las Vegas

"Approximately 22 percent of the housing currently available to white families is substandard whereas approximately 55 percent of that available to nonwhite families is substandard. . . . The rate of new construction for nonwhite families is substantially below that of construction for white families."

NEW MEXICO

Albuquerque

From 1950 to 1958, 30,000 new units were built. Only 24 were open to Negroes. The Negro population which is 3 percent of the total population shared in 0.008 percent of the new housing.

NEW YORK

"Negroes are the principal victims of housing discrimination in New York today. Persons of Puerto Rican origin are also deeply affected, particularly when their skins are dark enough or their accents sufficiently pronounced to make them easily identified."

"In the major cities, severe overcrowding is two to three times as prevalent in areas where Negroes live than in these cities as a whole. Age combines with overcrowding to make dwellings in Negro areas largely unfit for human habitation. Yet Negro families often pay no less rent than whites who occupy apartments of the same size but vastly superior conditions."

New York City

"Between 1950 and 1956, in the New York metropolitan area . . . only 12,000 nonwhite families found homes in new private dwellings—out of 737,000 new homes built in the area."

NORTH CAROLINA

Of the nonwhite occupied dwelling units in the State, approximately 39 percent is dilapidated as compared to about 13 percent for white occupied dwelling units. About 22.5 percent of nonwhite occupied units are overcrowded, that is, has more than 1.51 persons per room, while about 8 percent of white occupied dwellings is in this category.

OHIO

Most of the Negroes live in substandard housing in the older more dilapidated portions of Ohio's cities. "However, the prices for which such real estate is sold or rented to minority groups are generally in excess of its actual or real market value."

PENNSYLVANIA

"The great body of evidence indicates that housing discrimination is widespread in the State, and that it totals almost 1 million citizens among its direct victims.

". . . housing discrimination is not a problem limited to just the larger cities. . . . At least 30 cities . . . which have Negro populations exceeding 1,000 show evidence of patterns of discrimination and segregation in some instances more severe than in the large cities."

In almost all of the 17 other cities surveyed [other than Philadelphia and Pittsburgh], where evidence was presented, no new development housing had been made available to Negro occupancy. Only occasional instances were discovered where Negro families had been able to build their own homes on an individual basis, but even here there were reports of difficulty in securing suitable lots, mortgages and contractors."

Allentown

". . . houses in the area open to Negroes are reported to be 50 to 70 years old."

Easton

Houses available to Negroes are from 50 to 65 years old.

Erie

From "1940–50, the Negro population grew by 250 percent but their dwelling areas substantially contracted."

Lancaster

Houses available to Negroes are from 50 to 100 years old.

Philadelphia

Of 17,600 dilapidated dwelling units, 11,300 are occupied by Negroes.

One-third of the rental units occupied by nonwhites are classed as substandard as compared to one-tenth of the white-occupied rental units.

". . . Ninety-five percent of Negro homeowners and 99 percent of Negro renters live in structures built before 1930."

". . . out of an estimated 200,000 new dwelling units built between 1946–1955, only 1,927 (less than 1 percent) were available to Negroes.

". . . Negroes on the average pay more of their incomes for rent . . . 22.3 percent as against 18.6 percent for whites."

Pittsburgh

". . . of more than 7,000 rental units built in the city and suburbs between 1947 to 1953 . . . only 130 (were open) to Negro occupancy."

Reading

". . . over 50 percent of the dwellings in wards with highest Negro population were built before 1900, but by contrast, in wards without Negro dwellings less than 15 percent were built before 1900."

The Negro population is three times more overcrowded than is the city as a whole.

RHODE ISLAND

"The decision to concentrate our efforts on a study of the housing situation did not require any brain searching, for the problems minority groups have in obtaining decent housing have embarrassed our community for ages.

"Ninety percent of the nonwhite minority live in substandard housing.

"Other minority groups do have problems in procuring decent housing but nothing approaching the situation for Negroes."

Barrington, Cranstan, Pawtucket, Warwick, Woonsocket

"There has been quite a bit of building [in these cities]. None of these new housing units is available to the nonwhite for either sale or rental."

Providence

"More than two-thirds of all Negroes in Rhode Island live in the Greater Providence area. This . . . minority is the most poorly housed . . . [and] live in well defined areas under conditions ranging from slum to blight and deterioration."

TEXAS

". . . the quality and quantity of [minority] housing in Texas does not differ radically from that prevailing in other States of our country. Ordinarily, the quality of housing for minority groups is not as good as that for the majority."

UTAH

The Negro citizen experiences the most generally widespread inequality.

The Negro pays "substantially more than his white brother for equally inadequate facilities."

Ogden, Salt Lake City

The Negro is confined to substandard dwellings in the least desirable areas.

WASHINGTON

"From a relatively good status enjoyed in Seattle, King County, to conditions of near-servitude in the 'tri-cities' area of Kennewick, Pasco and Richland, Benton, and Franklin Counties, Negroes emerge from our study as the group most in need of . . . decent housing conditions."

East Pasco

Fifty percent of the Negroes live in substandard housing, such as "cabins, trailers, unrepaired shacks, all with poor or nonexistent lighting, heat and plumbing."

Seattle

Housing is the number one problem for minority groups, especially nonwhites. "Both from the viewpoint of quantity and quality housing with minimal standards is scarce, and substandard living conditions in overcrowded areas is growing."

Minority group members have shared only to an extremely limited extent in new housing construction opportunities.

517016—59——24

Tacoma

The housing picture as far as nonwhites are concerned is a grim one: "large numbers of Negroes herded together in a lower taxed, blighted area which serves as an effective ghetto in which they are penned."

WEST VIRGINIA

"Housing represents the area in which most discrimination exists. . . . Little progress has been made in terms of new housing being made available to groups, except that which is being provided by Governmental agencies." In the entire county of Kanawa less than 100 houses were built for the Negro since 1940.

* * *

At the National Conference of State Advisory Committees, former Governor Charles A. Sprague, of Oregon, presented a synopsis of the findings and conclusions of the six housing roundtables. The following is an excerpt from that presentation:

"In all of the sections on housing, there was general agreement that minority groups in virtually all the States do fail to enjoy full civil rights in obtaining housing. Usually, these groups are confined to the old and run-down sections of the cities, where living conditions are definitely substandard."

2. RESIDENTIAL PATTERNS OF MINORITIES

Statistics showing the inferior quantity and quality of housing occupied by or available to nonwhites tell only part of the story. A substandard house in a generally decent neighborhood is one thing. An inferior, overcrowded house in slums or blighted areas is another. What makes the bad housing of a large proportion of nonwhites so much worse than that of most whites is its heavy concentration within limited, deteriorating areas. As the Administrator of the Housing and Home Finance Agency, Mr. Norman Mason, testified: "In practically all communities, Negro and other minority group families are concentrated largely in the very areas most in need of renewal." [14]

Maps introduced in the Commission hearings show the high degree of concentration of nonwhite housing in New York, Atlanta, Chicago, Detroit, Birmingham, and New Orleans.[15] These maps, reprinted here (Charts XXII to XXXI), are based on 1950 Census tracts. In fact, the racial concentration is generally greater than indicated by the legend on the maps, which states that the areas in black are 75 percent nonwhite. Often it is 95 or practically 100 percent nonwhite. This same picture of racial concentration exists, more or less, in every city studied. State Advisory Committees, particularly from northern and western States, report this same kind of racial concentration in their major cities.

[14] Washington Hearing, p. 14.
[15] Regional Hearings, pp. 48–56.

Chart XXII. Manhattan

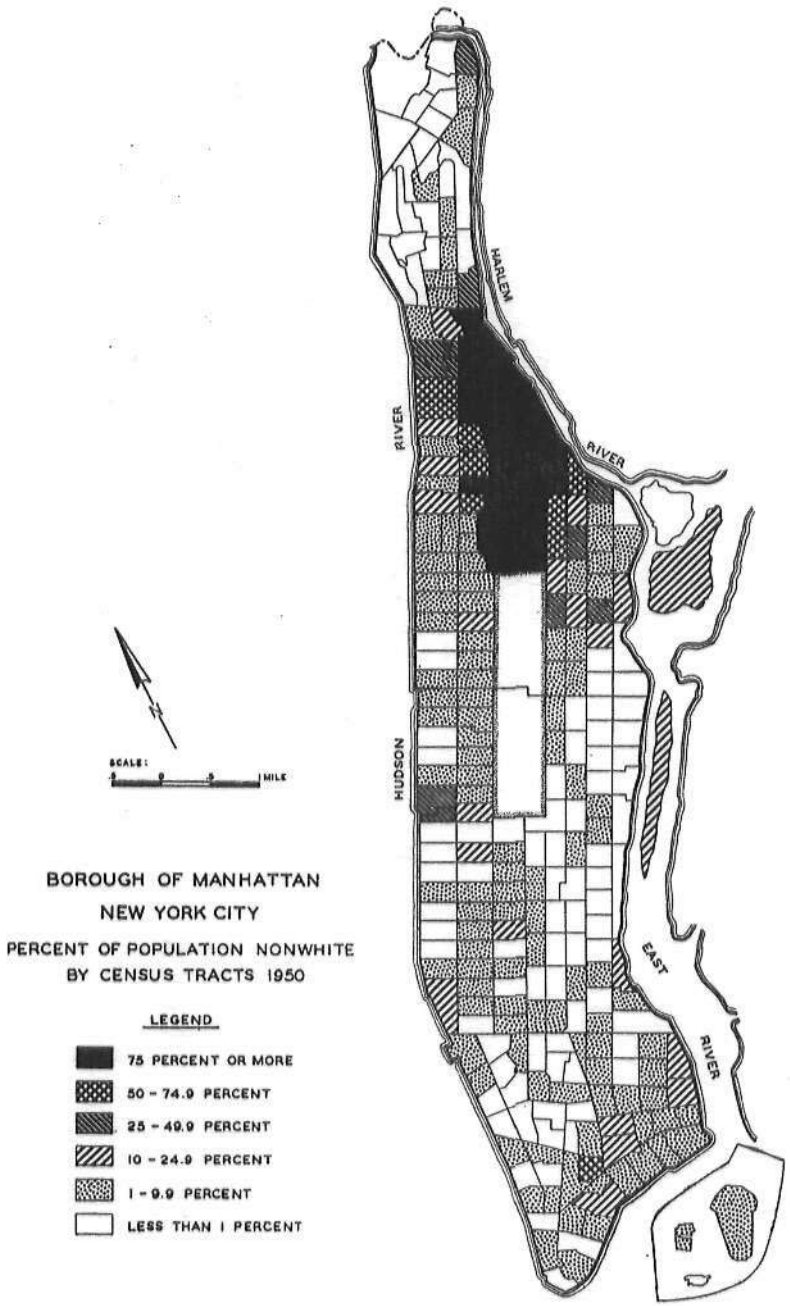

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CHART XXIII. Brooklyn

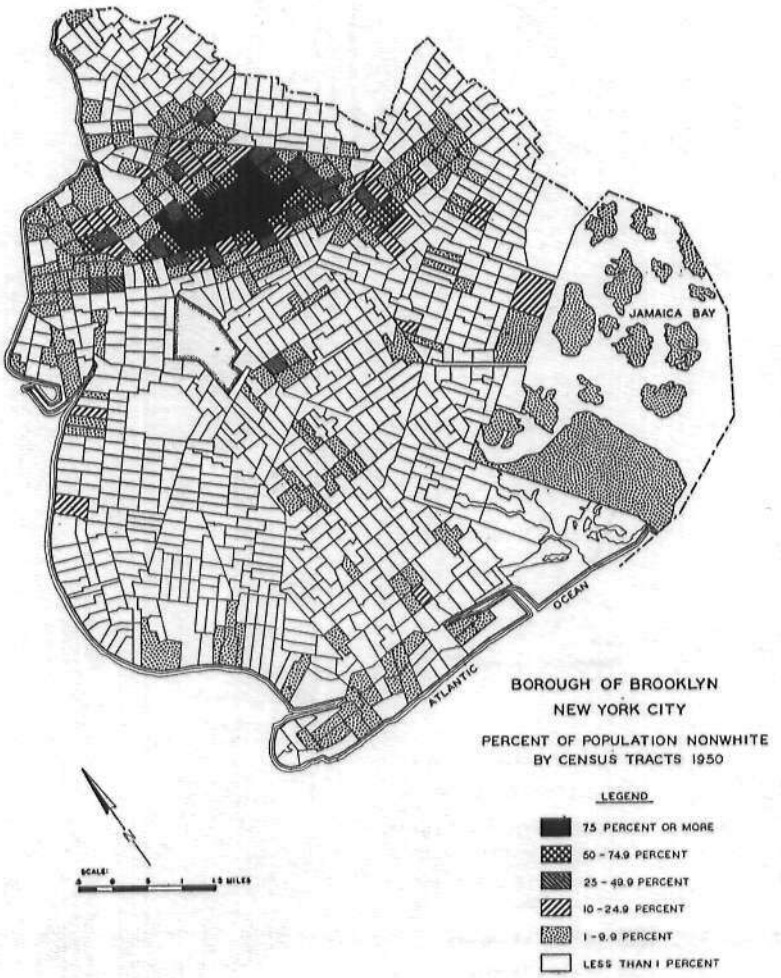

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CHART XXIV. The Bronx

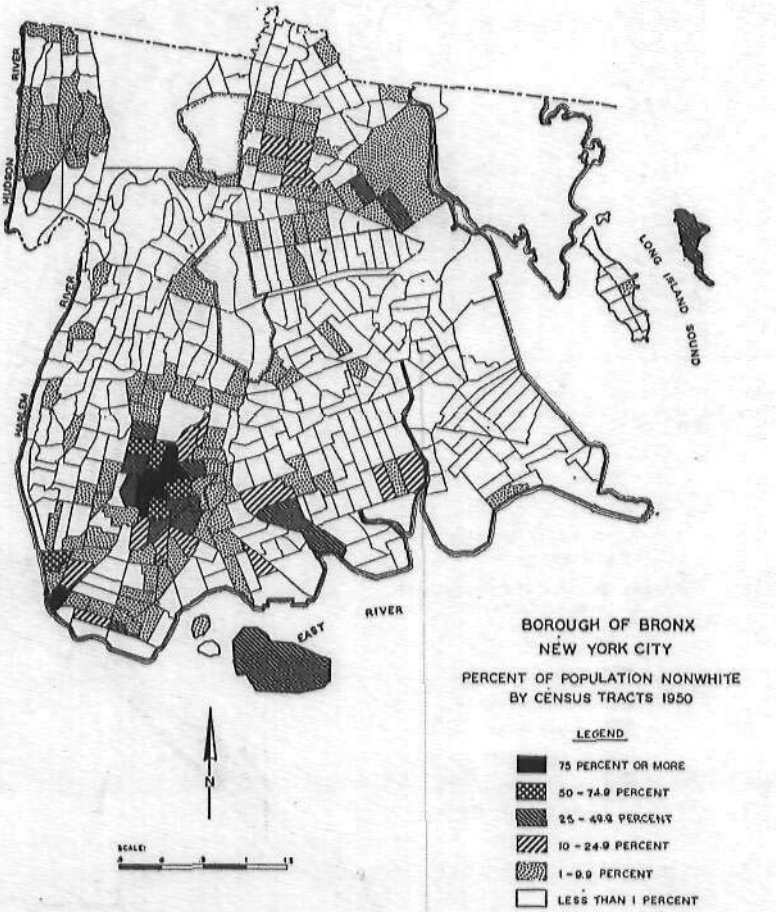

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CHART XXV. Queens

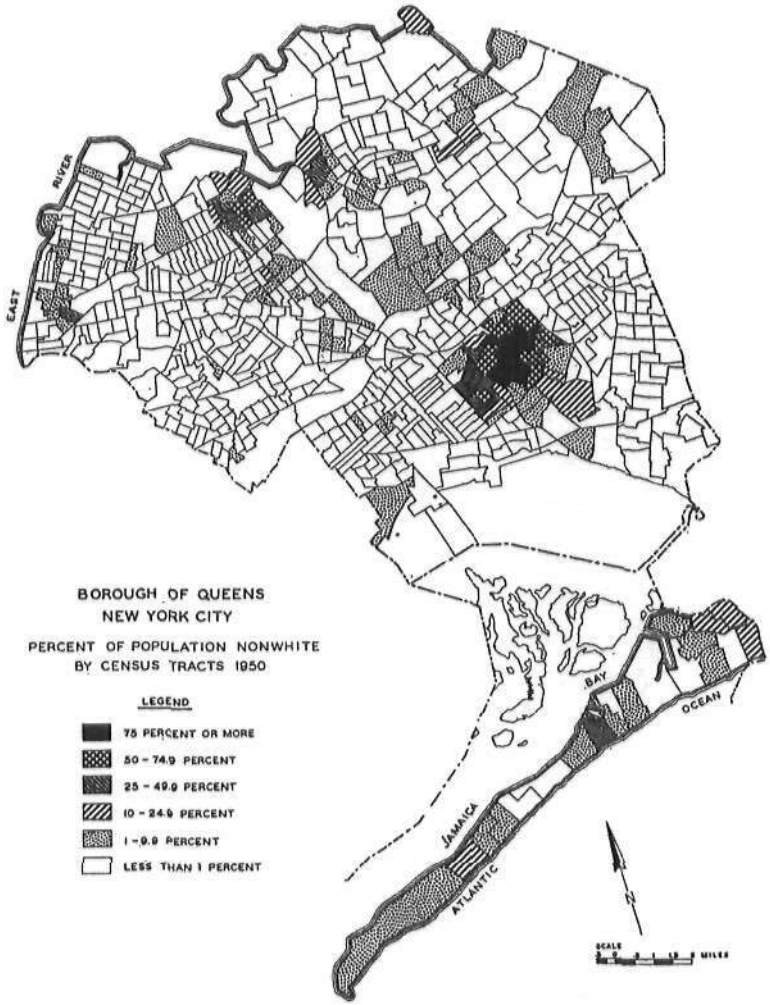

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CHART XXVI. Richmond

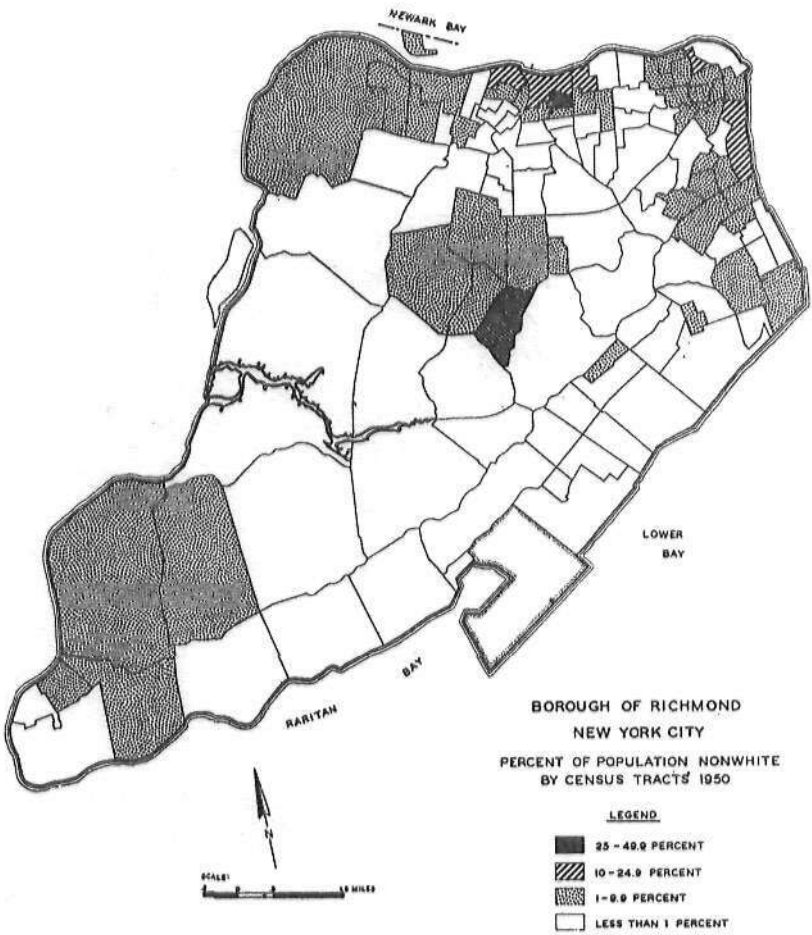

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Chart XXVII. Atlanta

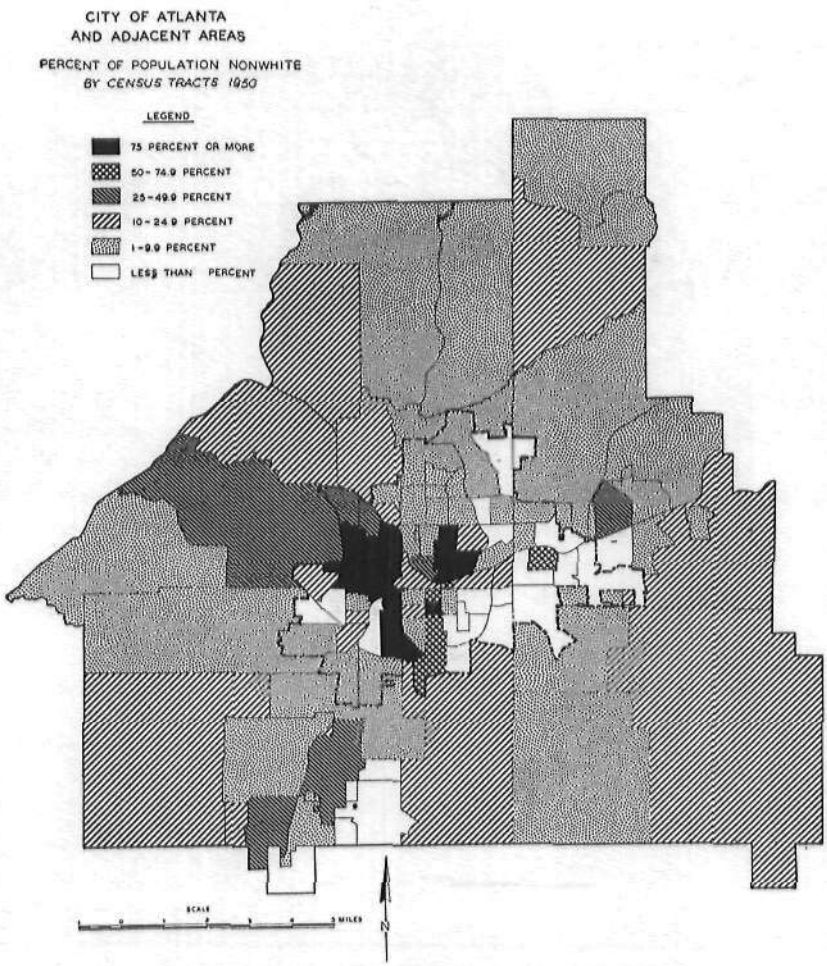

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Chart XXVIII. Chicago

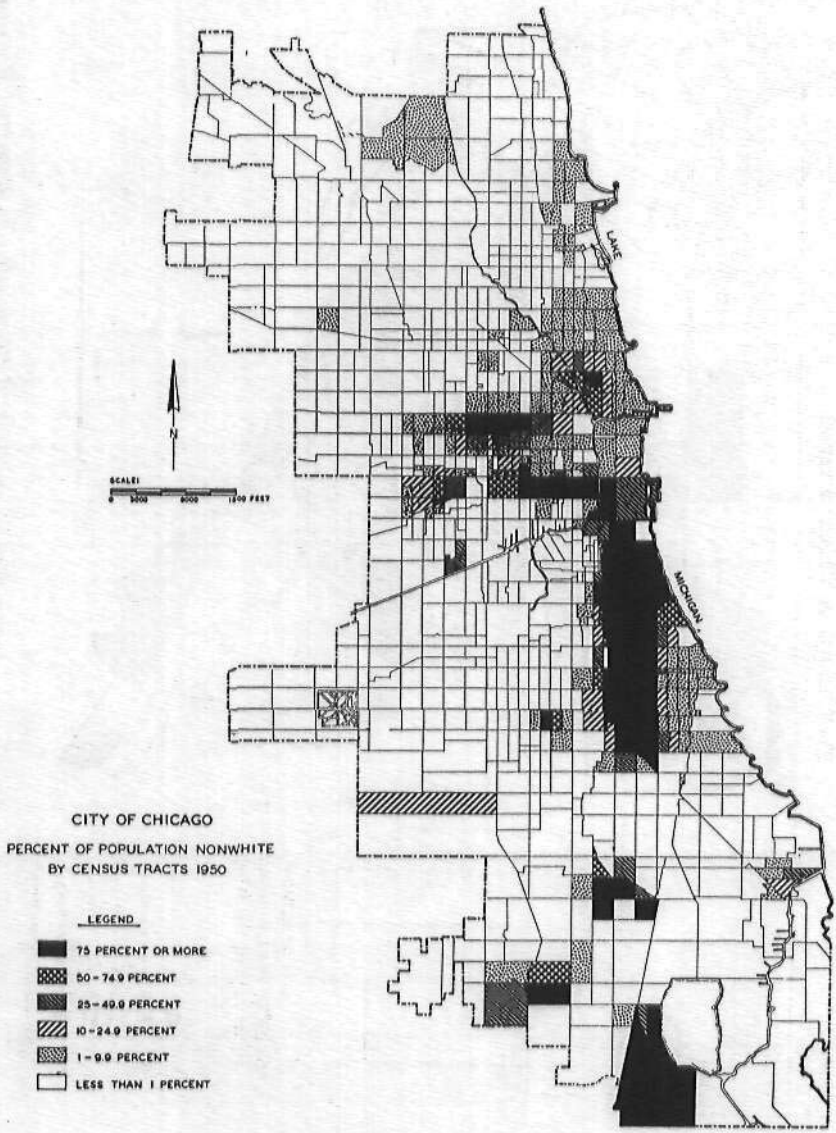

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Chart XXIX. Detroit

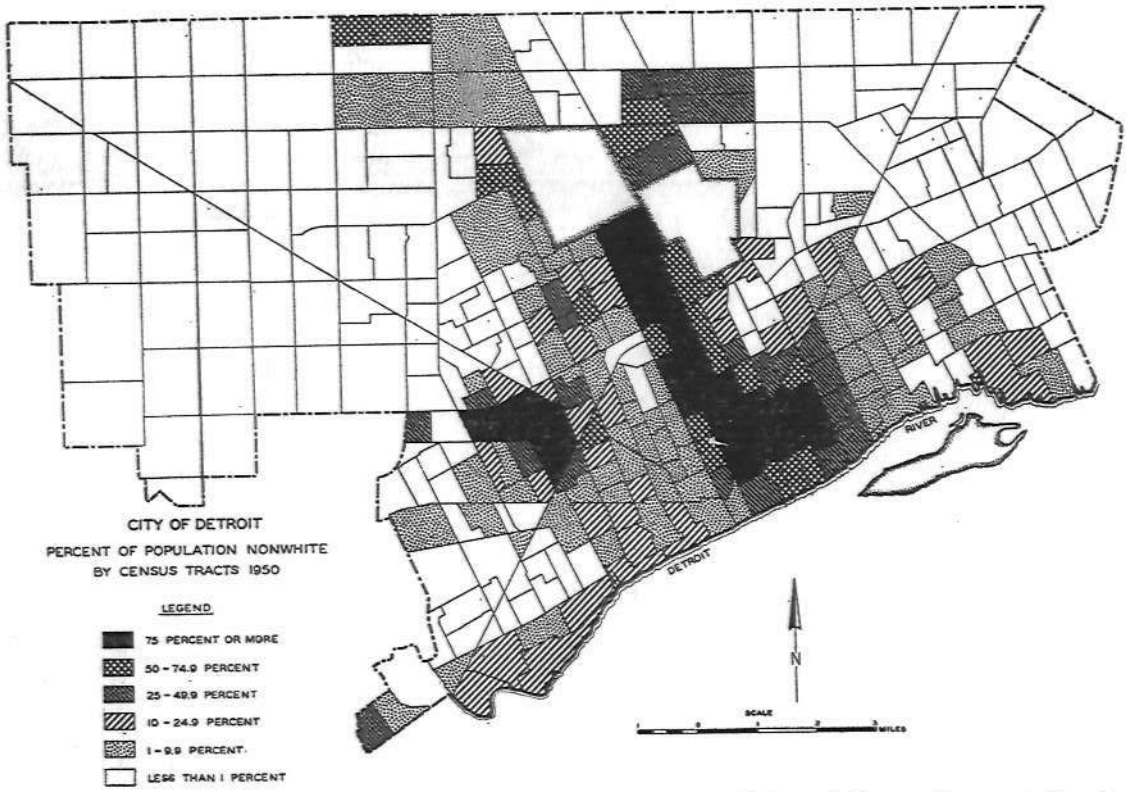

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Chart XXX. Birmingham

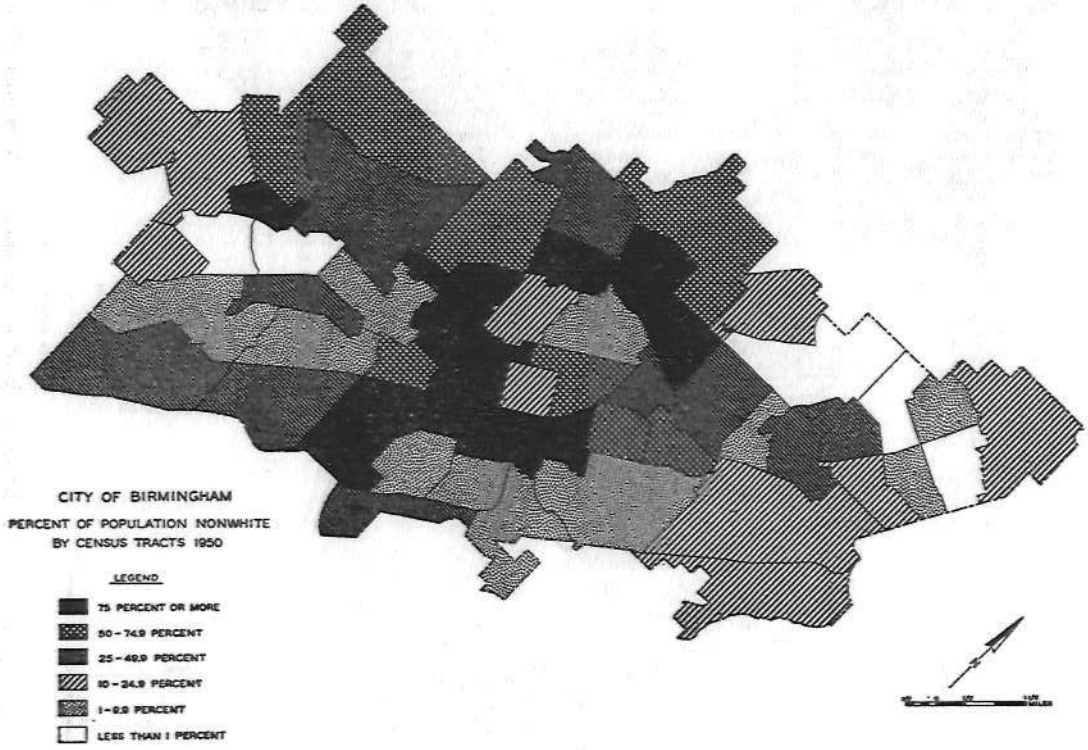

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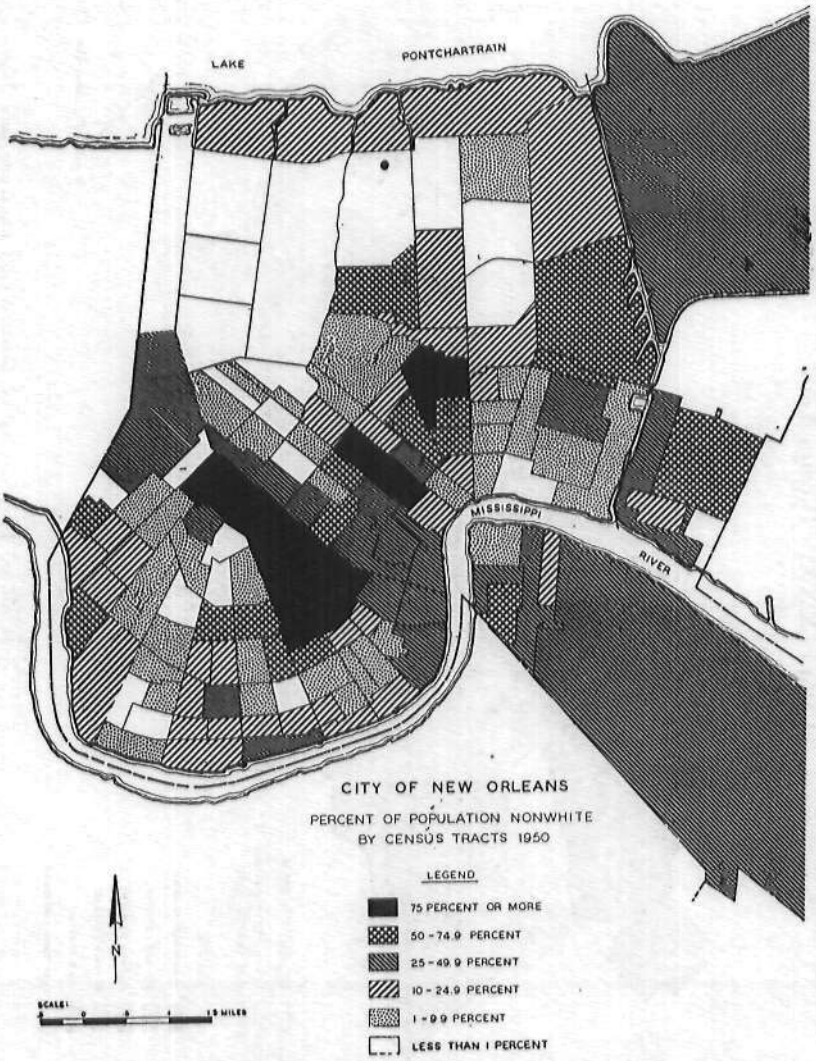
CHART XXXI. New Orleans



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It is interesting to note that the maps show more racial concentration in northern cities and more dispersion of nonwhites in the southern cities. This is generally still true,[16] although the degree of dispersion shown on the basis of census tracts is more than exists in actuality. For example, the map of Atlanta gives the impression that nonwhites are living throughout the city, whereas, in fact, as shown on the map on page 420, they live in one central area and a number of pockets. Nevertheless, these pockets of nonwhites are more scattered than in some northern cities, and there are areas in Atlanta where whites and nonwhites are living side by side. In some southern cities, a very considerable residential integration of whites and nonwhites has carried over from days of slavery.[17]

The fact that Negroes and whites have lived peacefully in close proximity in the South, even if the Negro homes have been former slave or servant quarters on back alleys, is not without significance. But, increasingly, southern cities as they develop and grow are following the established northern pattern of a central concentration of nonwhites, ringed by outlying white areas. A leading southern city planner testified that in all southern cities, as in Atlanta, the trend over the last 50 years has been in this direction.[18]

The general metropolitan residential pattern is shown by Chicago—now said, on the basis of census tracts, to be the most residentially segregated city in America.[19] The core of the present so-called Black Belt in Chicago existed in 1910. The Negro community has expanded successively from this inner core into new segregated areas adjacent to it.[20]

In New York, although there is an established city and State policy to promote integration, much the same situation prevails. A city official reported that although there were at least as many New Yorkers living in integrated areas as there are people in the city of Norfolk, Va., there were three times this many minority citizens in New York living in segregated areas.[21] Eighty percent of the city's nearly one million Negroes were said to be concentrated in four or five areas.[22] Until 1914, Negroes were living in almost every census tract, probably in order to be near their white employers. But the great postwar migration from the South and the development of allwhite suburbs changed this, as it is now changing southern cities.[23]

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[16] *Id.* at 60.
[17] *Id.* at 335, 342, 450.
[18] *Id.* at 48, 482.
[19] *Id.* at 632, 640–41, 683.
[20] *Id.* at 631–32.
[21] *Id.* at 73.
[22] *Id.* at 77.
[23] *Id.* at 147–48.

As whites moved to new homes on the outskirts of the city with yards and gardens, the Negroes were left behind in the central city. In Chicago, the proportion of the Negroes in the metropolitan area who live outside the city has increased only from about 14 percent in 1900 to a little over 16 percent in 1957, whereas the proportion of the area's whites living outside the city has increased from under 19 percent in 1900 to 45 percent in 1957.[24] It is not only in the largest cities that this has taken place but in every city the Commission has studied. In Syracuse, for instance, a city area that was one-fifth Negro in 1940 had become almost two-thirds Negro by 1957.[25]

Nor is this pattern of concentration found only in respect to Negroes. In New York, the Puerto Ricans find themselves in much the same situation.[26] State Advisory Committees report similar patterns with respect to Mexican-Americans, Spanish-Americans, and Indians.

This pattern of minority residential concentration is not entirely new, of course. New York and other cities have seen this before in the case of each group of newly arrived immigrants. New York had a great influx of Irish who lived in a few concentrated areas. Also there were the Germans, the Italians, and Jewish nationals of many countries. All of these lived first in concentrated areas, and then increasingly spread throughout the metropolitan area, although some of these areas of ethnic concentration remain.[27]

Similarly, in Chicago, if the Commission had held hearings there in 1910, it would have found the foreign-born groups, immigrants from Poland, Russia, Italy, and other parts of southern and eastern Europe, in the inner zones of the city, while the immigrants of the nineteenth century were moving outward. In the nineteenth century, German, Irish, and Scandinavian newcomers lived in separate enclaves in the aging or decayed areas of the city. Though diminished, these earlier patterns of immigrant segregation are still discernible. On an index of segregation for different groups, based on what percentage of a particular group would need to be moved elsewhere in the city to achieve the degree of dispersion of the native white population, the following degrees of segregation were found for foreign-born groups: Lithuanians, 52 percent, Czechoslovakians 49, Poles 45, Russians (mainly Jews) 44, Italians 41, Swedes 33, Irish 32, German 27, and 19 for English and Welsh immigrants.[28]

But for the Negro in Chicago, the figure representing the index of segregation is 85. Moreover, the Negro concentration in Chicago and elsewhere appears to be increasing, with few if any signs of the above-

[24] *Id.* at 874–875.
[25] *Id.* at 148.
[26] *Id.* at 81. See Dan Wakefield, *Island in the City* (Houghton Mifflin, 1959).
[27] Regional Hearings, pp. 142, 234.
[28] *Id.* at 631–32.

described American pattern in which a minority is gradually dispersed throughout the community.[29] In Chicago, save for a very few spots of uncertain future, the only areas of interracial living are the so-called transition areas that seem destined to become all-Negro.[30]

In only a few cities, notably Atlanta, do Negroes have access to open land in outlying or suburban areas. Although the pattern of residential segregation is increasing in Atlanta, the concentration within the inner city has been broken and a Negro corridor to growing Negro suburbs exists. This has relieved the pressure for Negro expansion into all-white areas by permitting community leaders to negotiate agreements against block-by-block acquisition of white residential areas.[31]

But in most metropolitan areas, there is either already formed or in the process of formation what Mayor Richardson Dilworth of Philadelphia calls "the white noose around the city," a ring of all-white suburbs closing in the central Negro area. Since the Negro population keeps expanding, the pressure for expansion of Negro living space mounts. The result of all this is, on the one hand, great overcrowding in the Negro sections and on the other hand, the phenomenon known as "blockbusting."

The overcrowding is seen in some of the statistics already given. If the population density in some of Harlem's worst blocks obtained in the rest of New York City, the entire population of the United States could fit into three of New York's boroughs.[32]

The corollary of overcrowding is, sooner or later, blockbusting. This is what happens when Negroes purchase in all-white blocks and the whites all leave. Sometimes one Negro purchase in a block is enough for the rest of the whites to sell out; sometimes it takes several such purchases to start a panic among whites. But essentially the process is the same. White homeowners in the shadow of Negro expansion try all sorts of devices to keep this from happening but in most instances the pressures prove irresistible.

The basic explanation of this, according to Mayor Hartsfield of Atlanta, is "the fact that the Negro land area is always restricted". The Negro thus "has to move painfully, a block or two at a time," while the white man "has the whole perimeter to pick". But the white resident on the border of an expanding Negro area also has housing difficulties. As the Mayor says, "his trouble is that he cannot refinance and cannot sell because the purchaser looks at that adjacent area and says 'they are going to be over here pretty soon'. . . ."

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[29] *Id.* at 545, 632, 770.
[30] *Id.* at 731, 770.
[31] *Id.* at 442–44, 479.
[32] *Id.* at 77.

> How many times we have had people in white areas band together and mutually agree that they won't sell . . . but here is what finally happens there . . . Six months later there is a divorce or the husband dies or maybe they are transferred to Birmingham or Nashville, Chicago. . . . That guy must sell, and bang goes the agreement, and oh, some of the tricks that are tried. Sometimes in order to avoid their neighbors they will invite the Negro to come in at midnight and look at the house. . . .

This is what Mayor Hartsfield calls "blockbusting with a little cooperation on the other side." [33]

A witness in Chicago described how the process works there: "The Negro housing shortage acts on the city just as heat applied to water in a boiler does. After the pressure reaches a certain point an opening is forced and the excess steam escapes. That is what is happening with our Negro population. As a weak point develops in a ghetto wall, the pressure from the population pile-up is so great that a breakout results in complete occupation of the adjacent white community." [34] The residential pattern emerging from this picture of Negro concentration in an overcrowded inner city, with the borders of the Negro area expanding painfully through blockbusting, is contrary to previous American experience.

In other words, the melting pot of the American city, which has contained and then diffused throughout the American community great blocs of foreign-born immigrants, has so far failed to do its historic work with the Negro American migrants to the metropolis. It has become a pressure cooker in which the slow heat of urbanization has come to a rapid boil but from which there is as yet no escape for most Negro Americans.

The causes of this and the possible remedies must be of concern to all Americans.

For this nation has been proud of its unprecendented social mobility. As Housing and Home Finance Administrator Mason said to the Commission, "We are living in a growing America, a changing America, and one in which its people are 'on the move.' " He reported that one out of every five American families moves each year. In this context, Mr. Mason viewed the increasing concentration of nonwhites in the core of our cities and the restrictions on their mobility as a warning. "It fences people in," Mr. Mason said and "limits the total community's growth and welfare." [35]

State Advisory Committee Reports

Residential patterns of the Negro, Indian and Spanish-name minority groups are described in the following excerpts from reports of the Commission's State Advisory Committees. The facts, statistics, and opinions are those given by the respective State Committees and have not been verified by the Commission.

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[33] *Id.* at 442, 447–48.
[34] *Id.* at 770.
[35] Washington Hearing, p. 5.

ALASKA

"There are no facts or studies available to indicate the extent of housing patterns in Alaska, however, there is physical evidence that 'island communities' do exist in the major cities."

ARIZONA

"Mexicans, Indians, and Negroes live in segregated parts of the cities or towns. . . ."

CALIFORNIA

Los Angeles

The Negro population is concentrated in the central part of the city. Expansion has been into the older southern and western areas immediately adjacent to the downtown sections. The original settlements of the Spanish-American families were in small compact groups on the fringes of the city. "However, the rapid growth of the area surrounded these homes and left them in central locations away from the main traffic streams in obscure small valleys or in wrong-side-of-the-tracks districts. Today, the streets in these neighborhoods are often unpaved and small, and many of the homes are makeshift and badly overcrowded."

COLORADO

The Mexican-American settlements are most often found on the fringes of the towns in the southern part of the State. They live in substandard and unsanitary housing conditions.

Denver

". . . over the past decade, numerous minorities lived in outlying areas. Within the past 10 to 15 years, there has been a heavy concentration of minority groups within a now described ghetto (five-points) district in Northeast Denver . . . . As a result of this ghetto-izing of minorities, particularly in Denver, there has recently been a need for 'expand or explode' in terms of housing. The result has been that minority groups, particularly Negroes, have expanded or invaded an area which previously was not available to them in terms of housing. There is a significant lack of minority group ownership of homes, lease of homes, rental of homes, within suburban areas, and particularly new subdivisions in and around the larger cities, notably Denver." The situation is intensified by the growth of industry in these environs. "It is notable and alarming that minority group workers are unable to find houses near their places of employment."

DELAWARE

"To posit the fact that there is one pattern in the State of Delaware for the geographic location of Negro residences in cities would be in error. Several patterns have been recognized as existing. In some towns, Negro homes are widely scattered; in other towns, Negro clusters usually occur at the edge of town, intervening mixed neighborhoods may separate the Negro residential area from the white neighborhood. The latter commonly has paved streets, water and sewer connections and street lights. These areas in which Negroes are located are usually the original locations for Negroes from the beginning of Negro residency. Another pattern is the isolated community in which all the Negroes live, like across the railroad tracks, or separated by some physical barrier. Most of the towns, however, have at least one large Negro district with other Negro neighborhoods sprinkled about the city. In this case, the main Negro residential district is usually the oldest residential area. . . . In

most instances, the area in which Negroes live is usually contained in such a manner that the area has very little opportunity for expansion. In other instances, where there is available space for expansion of the Negro population, they cannot buy the land. There is, however, evidences of new neighborhoods developing for Negroes in a few towns where some building has been taking place. But for the most part, Negro housing developments have been established adjacent to an already established Negro community; if not actually adjacent, the development is usually located in the direction of expansion of the Negro population."

Wilmington

". . . some new areas have been taken over by Negro residents; the direction of expansion, for the most part, having followed the ecological order of succession found in most large northern cities."

GEORGIA

"Mutually accepted local customs in housing patterns seem to prevail generally throughout the State."

The degree of residential concentration of Negroes is increasing in rural areas and in the smaller cities. But still, "Savannah and other old cities to a great degree and Georgia's other communities to a lesser degree have considerable integration in housing. . . . Almost every community has its low economic housing areas where white and Negro families live across the street from each other, and often, in alternating houses."

Savannah

There are white people and Negroes living in the same neighborhood. What once were slave quarters and carriage houses behind the big homes are now occupied by Negro families.

HAWAII

". . . general racial integration . . . has existed in Hawaii in all public and in many private fields."

ILLINOIS

Chicago

"Between 1898 and 1950, there was a steady rise in Negro residential concentration, which leveled off between 1940 and 1950, because of rapid transition of neighborhoods from white to Negro occupancy . . . . The expansion of the Negro residential concentration never quite kept pace with the population growth. Once a small area had 10 percent of its residential occupancy reported as nonwhite, it tended to increase from a low to a high. When a small area reached between 25 and 75 percent Negro occupancy it rather uniformly experienced a large increase (20 percent or more) in its proportion of nonwhite occupancy . . . . Most Negro migrants to the Chicago area enter areas of established Negro residence. The movement of Negroes into formerly all-white areas is led by those who have lived some time in the city."

INDIANA

"Historically, development of minority group housing patterns has been a gradual spreading pattern, moving into older housing in fringe areas. Minority group housing has remained relatively stable . . . with very little change in segregation."

Also bearing on residential patterns is the Committee's voting report which states that a 1946 survey had found "no Negro residents in 30 counties or

roughly one-third of the total number of counties." In a number of county seats and small communities the committee reported that "signs are visible advising 'Niggers don't let the sun go down on you here!' The inference to be drawn is that Negroes are forbidden to establish residence in one-third of the State of Indiana."

Indianapolis

All subdivisions on the periphery of the city are restricted to white occupancy.

KANSAS

"Since World War II, segregation seems to have been increased in the sense that almost none of the housing in the newer housing development has been made available even to those Negroes and Mexican-Americans who can afford to purchase it."

Kansas City

". . . minority group housing has tended to remain segregated in the older area and in two new projects in mixed areas."

Topeka

"Negroes live in many parts of the city but usually they are in segregated pockets within neighborhoods . . . . Mexican-Americans are located in the most undesirable section . . . and have not been able to move into other areas because of segregated housing patterns."

Wellington

". . . Negroes are located all over town except in the new housing development. There, Mexican-Americans are reported to be located in the most undesirable section of town."

Wichita

"Sociological studies in Wichita indicate a slight increase in segregation. In 1950 only 13 communities out of 209 with a population of over 30,000 had a more rigid pattern of residential segregation than did Wichita. There is a break in this pattern since 1950. The Negro district is expanding there and there are some marginal areas containing mixed population but the basic pattern is one of segregation and the marginal areas appear to be only in a transitional state from white to Negro."

KENTUCKY

Lexington

"The Negroes are concentrated in four areas in the city, with a few sporadic pockets elsewhere. Their housing is essentially segregated. There are fringe areas, and some slum areas, where Negroes and whites are intermixed. These areas are in the process of change . . . [T]here are a few families living on back streets or alleys in white neighborhoods. Nevertheless, there is not . . . any area of truly interracial housing."

MINNESOTA

"Investigation reveals an increasing acceptance of the idea of integration in housing as a consequence of which more isolated sales to Negroes and other nonwhites are occurring in otherwise all-white neighborhoods. But the problem is still increasing in intensity . . . . The evidence lies particularly in the increasing concentration of minority group population in clearly defined metropolitan areas . . . . In addition, the almost complete unavailability of new housing in suburbs and new housing developments attests to the problem."

MISSOURI

"Negroes are generally excluded from suburban and other outlying residential districts and are concentrated mainly in the older and blighted areas in the center section of the cities. Segregation exists in varying degrees in all sections of the State."

NEBRASKA

Omaha

". . . Negroes and other nonwhite groups have generally been living in older, low-value districts. The only change to be noted is that Negroes have been allowed to overflow into adjoining areas, not quite so old and of somewhat higher real estate values. Except for the Negroes moving into these adjoining areas there has been not notable decrease in the pattern of segregation. As a matter of fact . . . Negroes are more concentrated into one or two areas than was the case more than 40 years ago when they were to be found living scattered in various sections of the city."

NEVADA

Las Vegas

"Housing in Las Vegas is segregated . . . it is a 'matter of custom.'" The nonwhite population "is concentrated within an area known as Westside. . . ."

Reno

"As areas have become old and dilapidated they have become available to members of minority groups, with the result that such areas tend to become at least partially segregated areas."

NEW YORK

New York City

"In contrast to most other cities of the State where nonwhites reside almost exclusively in the oldest central area, New York City's suburbs have seen a substantial growth of nonwhite population in recent years. However, the majority of nonwhite who have moved to the suburbs have been limited . . . to older and deteriorating sections of the suburban communities."

OHIO

"The fixed pattern is one which confines minority group occupancy . . . generally to a given area with an expanding perimeter into adjoining areas. Instances of starting new areas are rare, but generally when such new areas . . . are started, the same pattern of expanding perimeter is applied.

"For the Negro group there is strong segregation in housing."

OREGON

"The complete lack of any Negroes in some cities suggests that there is some policy of exclusion. Three cities report no Negroes at all, and one other reports a single Negro family. [An]other two report 10 and 30 respectively. . . . It is apparent that there are no legal or official restrictions barring Negroes from residence in these areas. That there are elements in the communities which attempt to exclude them seems evident, and whether a policy of exclusion has official sanction or not it appears that it has been effective in preventing Negroes from taking up residence.

"The Indian population is largely rural, and many of them are in reservation communities. Other minorities are not only small in numbers but are less largely urban and less concentrated than the Negro and hence present less serious housing problems."

Portland

Suburbs are closed to nonwhites. As the white population moves to suburbia, the Negro population expands but, on the whole, to housing which is of the "old, run-down type that has little or no sales appeal." No new privately built housing is available to this minority group, either in the city or the suburbs.

Eugene-Springfield areas

There are 50 Negro families. There is no rigid segregation but there are "two small neighborhoods in each of which a third of the Negro families live. One consists of poor houses with no sewer system and the other is an . . . industrial area of older houses." Many white families of low socio-economic status live in both these areas.

PENNSYLVANIA

"Except for a few old and long established isolated areas around which new suburban developments have grown, no suburban neighborhoods are now open to Negroes. This exclusion has been concurrent with the vast suburban migration by whites." A survey showed that 10 out of 16 suburban municipalities actually experienced a decline in the nonwhite population in the years 1950–57.

Philadelphia

As of 1956, "85 percent of the nonwhite households are located in or adjacent to the central business district."

Pittsburgh

As of 1950, "7 out of 10 Negro families were located in three areas of high nonwhite concentration."

Reading

"Eighty percent of the Negroes in 1950 lived in the city's five central wards."

RHODE ISLAND

Providence

"More than two-thirds of all Negroes in Rhode Island live in the Greater Providence area. . . . A total of 95 percent of the Negro population is now located within 13 of the 37 census tracts. . . . As the Negro population increases, there is likely to be an extension of the present pattern of housing segregation. . ."

TEXAS

"Minority groups very definitely have tended to expand in areas adjacent to small settlements. The majority groups move out and leave houses, the quality of which is generally relatively low and, in some instances, definitely substandard. As this expansion has progressed, the majority groups move on to other areas. This progression usually means that the quality of the houses taken over by the minority groups is generally relatively low and in some instances, definitely substandard."

UTAH

The Mexican-American minority group "often lives in the worst slum areas of our cities. . . . [The Negro] is confined to the "least desirable areas of Salt Lake City and Ogden. . . ."

The Indian situation is quite different. Two thousand Indians live on, and 350 off the reservation, and a large number move on and off. When life is too hard away from the reservation, the Indian returns to this haven.

WASHINGTON

Seattle

"As a result of Seattle's economic expansion, nonwhites continue to migrate to the city, find housing only in the substandard neighborhoods, and therefore increase the already heavy pressures within such congested districts."

Spokane

"Generally, all middle-class, 'decent' housing in Spokane is closed to them [Negroes], and they are relegated to the inferior, run-down neighborhoods which will continue to get worse. . . ."

Tacoma

"Here, too, we find the classic situation of the postwar era: large numbers of Negroes herded together in a . . . blighted area which serves as an effective ghetto. . . ."

WYOMING

"Wyoming is an area of small communities. . . . there is no segregation in the full sense of the word as such, however, some areas do contain what have been termed as minority groups."

* * *

At the Commission's National Conference of State Advisory Committees, former Governor Charles A. Sprague, of Oregon, presented a synopsis of the findings and conclusions of the six housing roundtables. The following is an excerpt from that presentation:

"Historically, our cities have had successive waves of immigration. The latest immigrant group would be at the lowest level economically, and so would have to take the cheapest and poorest housing. Then as they rose in economic status later waves of new groups would replace them and the earlier migrants would merge into the general population. Thus their segregated status would be erased. However, the ethnic origin of most of those waves was European. In the case of the Negroes, the color bar so far has served to prevent the dispersing of the Negro population generally throughout our cities."

3. CAUSES OF THE HOUSING INEQUALITIES OF MINORITIES

In part, the special housing problem of minorities is caused by their economic, social, and cultural disabilities.

A high proportion of Negro, Puerto Rican, and Mexican-Americans are in the low income category that faces acute housing difficulties regardless of race.[36] As late as 1946, when many of the present homes were being built, only some 9 percent of the nonwhite families residing in urban areas outside the South had annual incomes above $5,000, and only 3 percent of those in the South had such incomes. By 1957, the picture had greatly improved, but still only about 29 percent of nonwhite families in northern urban areas had such incomes and 18 percent in southern urban areas.[37] In the New England states non-

[36] Regional hearings, p. 33. In 1958 it was estimated that 56.4 percent of nonwhite families earn less than $3,000 yearly, while only 22.6 percent of white families are in this category. Current Population Report No. 27, Consumer Income Table 12, Bureau of Census, 1958.

[37] Washington hearing, pp. 12–13.

white income is only about 65 percent of that of whites.[38] In 1957 the average family income of nonwhite renters in Chicago was $3,947, compared with $5,517 for that of the average white renter.[39]

For low-income Americans of all colors, the quantity and quality of housing available is inadequate, to say the least. So, it is fair to say that few nonwhites could afford good houses in the suburbs or elsewhere. In New York City a few years ago it was found that only 13,000 Negro families, or less than 7 percent of the Negro population, had incomes high enough to purchase new homes in the suburbs even if such were available.[40]

Moreover, a considerable part of these low-income nonwhites are recent migrants from southern or Puerto Rican rural areas. Their unreadiness for city life adds to their difficulties. The city's unreadiness to provide adequate housing and other social services for them is not necessarily connected with race. Large numbers of poor whites have moved from the South to Chicago and face serious problems of housing and social adjustment.[41] Recent migrants occupy substandard units twice as often in Chicago as do persons who have lived in the city for two years or more.[42]

Negro, Puerto Rican, and Mexican-Americans are therefore in part experiencing the problems that earlier generations of immigrants faced and finally overcame.[43] Newcomers to the city, with low incomes, traditionally begin at the bottom of the ladder, in the worst sections of the city, in the slums. They also tend naturally to find living quarters near others of their own group who have made the migration earlier. A spokesman for Puerto Rican Americans testified that they first go to already existing Puerto Rican enclaves in New York, where people speak the same language, and that some Puerto Ricans would never live anywhere else.[44]

Thus the pattern of racial concentration is in part voluntary.[45] As the executive secretary of the National Association for the Advancement of Colored People testified, there are "colored people in Harlem who wouldn't move out of Harlem if you gave them a gold-plated apartment." Jewish enclaves remain on the lower East Side, and there is a German concentration in Yorkville, even though others of these groups have dispersed throughout New York City.[46]

On the other hand, this concentration is also involuntary.

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[38] Regional Hearings, p. 150.
[39] *Id.* at 634.
[40] *Id.* at 160.
[41] *Id.* at 688–89.
[42] *Id.* at 571, 634.
[43] *Id.* at 57.
[44] *Id.* at 393.
[45] *Id.* at 632–33.
[46] *Id.* at 339.

This does not necessarily mean that Negroes are barred only because of race prejudice. Many people in established residential areas no doubt fear and resist the arrival of low-income migrants because of what they regard as the low cultural and social standards of the newcomers.[47] In the Back-of-the-Yards area of Chicago, for instance, the predominantly Central European, Roman Catholic residents are said to view not only the intrusion of Negroes but of white Protestants or even Irish Catholics as a threat to the homogeneity of the community.[48]

It may be that the presence of a small number of such outsiders would be acceptable, but what is feared is inundation.[49] The first newcomers might be upper-class members of their group, otherwise acceptable in terms of cultural and social standards, but their arrival would be viewed as the opening of the dike to the lower-class majority, walled-in in the central city areas. As a witness for the Back-of-the-Yards Neighborhood Council, Mr. Saul Alinsky, testified in explaining why the white population runs for the exits when a Negro family moves in:

> It cannot be simply ascribed to racial prejudice or the manipulations of unscrupulous real estate operators. Even though there are many whites who dislike Negroes, they are not so foolish or so prejudiced as to leave just because there are some Negro families in the vicinity. . . . The principal reason for flight is the belief that the neighborhood will soon be all-Negro, and that the family which remains will be a white minority of one. The coming of the first Negro family symbolizes the beginning of the end. This has been the white experience, and the white population, like any population, acts on the basis of what experience has taught it.[50]

All these factors contributing to the housing difficulties of minorities are important. Nevertheless, they do not change the fact that at the core of the problem is discrimination by reason of color or race.[51] As the above-quoted witness testified in Chicago, the sociological snapshots of white immigrant and Negro migrant look alike as long as you don't take account of the difference in colors.[52]

White immigrants who learned the American language and had an American haircut became Americanized. They were able to move from the status of immigrancy to the presidency of General Motors in a single generation.[53] As Archbishop Meyer stated in Chicago, these earlier immigrants did suffer "to a greater or lesser extent, from social and economic disabilities imposed by a sometimes scornful, some-

[47] *Id.* at 33.
[48] *Id.* at 771.
[49] *Id.* at 153, 772.
[50] *Id.* at 772.
[51] *Id.* at 33, 57.
[52] *Id.* at 769.
[53] *Id.* at 155.

times suspicious native population. These European peoples were segregated and discriminated against." But, the Archbishop added:

> With the passage of time, these people learned the English language, they learned our laws, our social practices. What is more, they equipped and trained themselves to occupy positions requiring high skill, professional knowledge and great responsibility. In short, they began to produce a middle class that was capable and desirous of taking its place in the mainstream of American life. As this new type of person developed, the strictures and confining bonds of the older national communities began to dissolve. As disabilities against persons of European ancestry faded, the residents of old national ghettoes found they had the choice of remaining where they were or moving into neighborhoods and communities frequently designated as English-speaking or "more typically American." Having satisfied the educational, social, and economic requirements, the former European immigrant or his child was in a position to make the choice.[54]

The crucial factor in housing today is that the visibility of Negro Americans and dark Puerto Ricans seems to make this choice impossible. Only discrimination by reason of color can explain the housing difficulties of the numerous colored Americans of high talent, demonstrated ability, and adequate income.[55]

How can the problem of the Negro be Americanization, when he has been an American longer than most of the nineteenth and twentieth century immigrants? How can it be simply urbanization when hundreds of thousands of Negroes, who were born in northern cities and are urbanized by any standards, are still discriminated against? [56]

Granted that a considerable portion of the Negro urban population is still in a condition of social demoralization that can be traced to slavery, the fact remains that as Archbishop Meyer stated:

> It is indisputable that America now boasts of many Negroes who have made the ascent into the middle classes. . . . It is no longer possible to speak of some distant time when there may be a significant number of Negroes who by education, economic position, or style of life will be able to live as other American citizens do. We now have many such people teaching the classrooms of our universities, pleading cases in our law courts, performing operations in our hospitals, and in short doing work that only the highest intelligences most perfectly trained are capable of.[57]

Archbishop Meyer then asked the uncomfortable question:

> Has this new and rapidly increasing Negro middle class been able to choose its place of residence as the children of our European immigrants were able to do? Does the fully competent Negro person have the option we alluded to above? Unfortunately, the only honest answer we can give it, at best, is a qualified no.[58]

[54] *Id.* at 801–02.
[55] *Id.* at 33, 155.
[56] *Id.* at 632, 769.
[57] *Id.* at 802.
[58] *Ibid.*

Discrimination against nonwhites applies to *all* income groups. The charts printed above (pp. 344–47) show for a number of major cities that, taking whites and nonwhites in the same income category or in the same range in terms of rent or purchase price of dwelling, the nonwhites get inferior housing.[59]

The low educational, cultural, and social status of low-income nonwhites is no explanation for the housing difficulties of well-educated, prosperous nonwhites. Reluctance on the part of the public and industry to locate low-cost housing that would house a considerable proportion of nonwhites in higher-income white areas is perhaps understandable. But the confinement of well-educated, higher-income Negroes within restricted areas, must be attributed primarily to racial prejudice.*

There may be relatively few Negroes able to afford a home in the suburbs, and only some of these would want such homes, but the fact is that this alternative is generally closed to them. It is this shutting of the door of opportunity open to other Americans, this confinement behind invisible lines, that makes Negroes call their residential areas a ghetto. The Commission was struck by the recurring use of this description in all three of its housing hearings.[60]

As Rabbi Hirsch told the Commission in Chicago, the term "ghetto" originated in Venice where the Jewish section was surrounded by a high wall, and entry and exit were regulated by means of an iron gate called in Italian "ghetto".[61] In this country, the Constitution would prevent any such public manifestation of discrimination. But the invisible barriers to equal opportunity for Negroes are manifest when a Jackie Robinson, with a high income and the respect of the

*COMMISSIONER JOHNSON:

I do not think that this portion of the Commission's report can be overemphasized. The "race tag" attached to housing which results in the denial of freedom of choice in housing for Negroes regardless of their educational, cultural, or economic achievements, is in my view, one of the most disturbing facts of American life today. It is an outstanding example of the gap between American ideals and practices. The American ideal that men should advance on their merit becomes a mockery when a man's race or color in fact forecloses him from exercising free choice in providing a home for his family. Indeed, the "race tag" operates as a penalty against some who have succeeded by depriving them of the enjoyment of a home of their choice and as a brake against some with the capacity to achieve. Continued denial of freedom of choice in housing accommodations tends to deprive minority citizens of an important incentive for self-improvement and community excellence.

[59] See also, Regional Hearings, pp. 634–35.

[60] Regional Hearings, pp. 17, 73, 125, 148, 154, 204, 209, 235, 322, 324, 332, 340, 344, 424, 480, 546, 802, 812.

[61] *Id.* at 812.

country, cannot find a satisfactory suburban home in the State of New York. Mr. Robinson testified that:

> At first we were told the house we were interested in had been sold just before we inquired, or we would be invited to make an offer, a sort of sealed bid, and then we'd be told that offers higher than ours had been turned down. Then we tried buying houses on the spot for whatever price was asked. They handled this by telling us the house had been taken off the market. Once we met a broker who told us he would like to help us find a home, but his clients were against selling to Negroes. Whether or not we got a story with the refusal, the results were always the same.[62]

On occasion, the resistance to the Negro takes the form of violence.[63] But usually the resistance succeeds at the threshold. In a study of the housing problems of a number of higher income, professional Negroes in five upstate New York cities, it was found that time and again these well-mannered, well-dressed persons would make an appointment on the phone to see a home or apartment and be told it was available, but, on arrival a few minutes later, when their color was visible, be told that the place had been taken. Two and a half years after their arrival in these cities, more than half of the Negro professionals were still living in inadequate housing. Many of them had to pay prices they could ill afford for temporary, makeshift accommodations. The State official who supervised this study of the experiences of Negroes, all of whom were in the upper 14 percent of the population with respect to education, testified that racial discrimination was undoubtedly the chief cause of their difficulties.[64]

To say that racial discrimination is a major cause of the housing difficulties of racial minorities is, however, to raise the next question: what is the cause for the discrimination? Some of the factors producing fear and hostility among whites living in the shadow of an expanding Negro area have been discussed. They see a slum wave coming to wipe out their community. These fears are on occasion played upon and magnified by real estate agents seeking to profit by the many transactions occurring when an area undergoes racial transition; speculators often seek to buy white property cheap at panic prices and sell it high to Negroes competing for the new opportunity.

A white housewife in the Springfield Gardens community in Queens described what happens when this kind of blockbusting is in process:

> The block behind me had its first Negro family move in this past summer and . . . almost at the same time [when] the family's moving van moved away a small group of real estate interests moved in with them, in a very literal sense. The telephones began to ring from nine in the morning until ten at night not only on that particular block, but all the blocks in the

[62] *Id.* at 269.
[63] *Id.* at 556, 852–53.
[64] *Id.* at 151. See *In Search of Housing*, N.Y. State Comm. Against Discrimination, Nov. 1958.

> area. . . . At the same time there were car pools that would pull up—we would see them—at the beginning of the block and six and seven real estate dealers would get out and kind of fan out in the area, geographically dividing up the houses amongst them. It was enough to create a panic just to watch this kind of thing going on. . . .[65]

When white communities do go all-Negro, the whites who move out remember and resent, and resist even more bitterly if the expanding Negro area begins again to approach their new homes.[66] Such fears and resentments are understandable, just as is the continued Negro pressure for expansion. Even the actions of real estate men making a profit out of this situation are, as Mayor Hartsfield of Atlanta says, "a very human temptation." [67]

Because of the tensions involved in such areas of transition and the strong feelings aroused in the affected whites, white financial institutions for the most part, and many white real estate brokers, will not participate in the initial blockbusting purchases.[68] What is more difficult to understand is why, according to testimony received, it is difficult for whites who choose to live in these so-called transition areas to obtain mortgages, although mortgages will be available to them on homes in allwhite areas a few blocks away.[69]

The reasons for discrimination against Negroes in outlying white areas beyond the range of any possible contiguous Negro area expansion are more complicated. The fears expressed here are not of inundation but of a loss of both social status and of property values resulting from the presence of Negroes in the neighborhood.[70] Although there is considerable evidence that the standards of a neighborhood and the property values need not be depreciated by the presence of Negroes, these fears by their own force can become self-fulfilling prophecies. The fear produces panic-selling, which in turn results in the very depreciation in the housing market and chaos in the community that is feared.[71] In a real sense, the only thing people in this situation have to fear is fear itself.

Thus, fear and prejudice are at the bottom of the problem. As was testified by a representative of the white Back-of-the-Yards Neighborhood Council: "Let there be no mistake about it: no white Chicago community wants Negroes." [72]

That this kind of prejudice is involved and that this is a universal human phenomenon not necessarily connected with color, is shown by the discrimination against Jews. Today Jews can in most cases get

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[65] Regional hearings, pp. 217–18.
[66] *Id.* at 773.
[67] *Id.* at 448.
[68] *Id.* at 35, 519, 739.
[69] *Id.* at 224–25.
[70] *Id.* at 33.
[71] *Id.* at 34.
[72] *Id.* at 770.

housing that is equivalent in quality to that of other whites, and Jewish spokesmen emphasized that the major problem of discrimination today concerned the Negro.[73] But we were informed that in practically every large city in the United States and in the suburbs as well, there is discrimination against Jews in housing. In New York City over a third of the 200 cooperative apartment houses were said to exclude Jews. The Westchester suburb of Bronxville is said to be what Hitler called "Judenrein"—free of Jews—as a result of a covenant that requires a prospective purchaser to get the approval of all four of the nearest neighbors to the house he would like to purchase. Other suburbs keep Jews out by controlling the listings of real estate brokers. Others make essential community facilities dependent on membership in a "private" club from which Jews are excluded. In the nation's capital, the District of Columbia and its environs, there are said to be fourteen areas from which Jews are excluded. A number of well-known Chicago suburbs are also said to be almost completely closed to Jews. Similar information was received about a number of other States and cities.[74]

No one would equate this housing discrimination against Jews with the far more widespread and pressing problem facing Negro Americans. But its persistence, despite the educational, cultural, and economic attainments of the Jews involved, is sombre warning that the fears and prejudices at the bottom of discrimination in housing are indeed difficult to fathom and to uproot.

STATE ADVISORY COMMITTEE REPORTS

The causes of the housing inequalities of minorities are discussed in the following excerpts from reports of the Commission's State Advisory Committees. The facts, statistics and opinions are those given by the respective State committees and have not been verified by the Commission.

ALASKA

"The Committee feels that it may very well be a combination of economic and cultural factors as well as some subtle discrimination that creates this situation."

CALIFORNIA

"An important deterrent to the ability of the [minority] families to buy is the prevalence of debts for personal property . . . it must be remembered that the minority family dollar will buy more personal than real property, since the families face no 'deed' restrictions in the kinds of such personal property that they can buy . . . in housing, their dollar has a much more restricted choice and is decidedly less valuable.

"Perhaps one important reason [for the concentration of minority groups] is the existence of cultural ties which create a preference on their part for living with persons of their own racial or national origins."

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[73] *Id.* at 395, 403, 783, 812.
[74] *Id.* at 395–96, 404–05, 784.

Los Angeles

Discrimination prevented a Negro family from moving into their home. The family, consisting of both parents (junior high school teachers) and an adopted child, purchased a $27,500 home in an area now known as Baldwin Hills in Los Angeles. When the neighborhood residents became aware of the color of their new neighbors they beseiged the developer with phone calls. The developer tried to buy the house back, but the new owners referred him to their real estate broker. He then met with members of the community who continued to be adamant and even went so far as to threaten bodily injury to the Negro family. The developer finally bought the house back for $37,500 and eventually resold it for $28,000.

COLORADO

"In Colorado, there are practices of discrimination against Jewish citizens on a religious basis but it is difficult to define or isolate.

"Minority group members must be educated against the gregarious tendency which permits the finger to be pointed, indicating that they like to live together and are unhappy elsewhere.

"The greatest barrier against the opportunity to purchase on the part of minority persons is the endless variety of techniques which seem to be used to perpetuate discrimination."

DELAWARE

The lack of income is one of the major hurdles for the Negro to overcome in his quest for decent housing. 78.9 percent of the Negro families have an income of less than $2,500 as compared to 40.8 percent of the resident white families. The median income for white families in Delaware is $3,134 in contrast to $1,452 for Negro families and unrelated individuals. And for every 18 Negro families earning between $2,500 and $5,000 there are 39 white families, while there are only 3 Negro families to every 22 white families in the $5,000 to $10,000 bracket. "All Negroes know which housing developments exclude them, a few make efforts to get admitted, but are circumvented by all manner of excuses which avoid racial implications, but basically race is the reason for exclusion."

GEORGIA

Atlanta

There is the "difficulty of obtaining mortgage money commitments combined with the shortage of land for Negro housing. . . . In the smaller communities, Negroes have neither their own capital nor the financing sources to help their communities burst out of rigidly confined areas."

KENTUCKY

Fayette County

"Based on the 1950 census there are 17,394 Negroes in Fayette County, which is 17.3 percent of the total population. The median income is $1,267:

20.0 percent earn $500 or less per year
16.7 percent earn between $500–$999 per year
19.1 percent earn between $1,000–$1,499 per year
15.0 percent earn between $1,500–$1,999 per year
70.8 percent earn under $2,000 per year."

MASSACHUSETTS

Boston

A survey by the Boston Urban League found only two out of 400 nonwhite families willing to move into white areas.

MINNESOTA

Discrimination against Jews exists to a somewhat lesser degree than against nonwhites. It "is mitigated somewhat by their generally more favorable economic position and has decreased noticeably since World War II."

MISSOURI

Kansas City

Jews are barred from residence in Leawood, a section of the city.

St. Louis

The area called High Acres bars Jews from residence.

A comparison of incomes in 1949 points up the poor economic condition of the nonwhite population as compared to the white:

Income:

	Nonwhite	*White*
$1000 or more	77.6	88.0
$2000 or more	46.0	75.1
$3000 or more	10.8	50.5
$4000 or more	1.9	24.1
$5000 or more	.8	12.8

NEBRASKA

Omaha

"It has been alleged, and with reasonable basis in fact, that whereas too many whites live in substandard housing, this circumstance is almost completely explained by the factors of poverty and ignorance . . . while there are instances in which poverty and ignorance do not explain [the Negroes'] inability to obtain for themselves adequate and standard housing."

NEW HAMPSHIRE

Portsmouth

"The problem of the Negro minority in New Hampshire centers chiefly in the field of private housing in the Portsmouth area. . . . Proprietors of many apartment houses in that area refuse colored families, and some owners are reluctant to sell property to them."

NEW MEXICO

Albuquerque

Two thousand to two thousand five hundred Negro personnel from two bases in the vicinity of this city are forced, because of their color, to live in "converted garages and chicken coops" at rents from $55 to $70 a month.

NEW YORK

"Their [the Negroes'] predominantly low incomes are not the only, nor even the most important cause of housing disadvantages suffered by nonwhites. Scholarly investigations have provided convincing evidence that a growing number of Negro families in the State now possess sufficient incomes to buy or rent good homes outside slum areas; but that when Negroes of high economic, educational, and social qualifications seek homes outside of established Negro areas, they seldom have the opportunity to buy or rent the home of their choice. It has been demonstrated beyond doubt that discrimination is the ultimate controlling factor preventing Negroes from exercising freedom of choice in the housing market."

NORTH CAROLINA

". . . data indicate that low incomes and limited purchasing power of the nonwhite population are probably not the only factors which account for the abnormally high proportion of inferior housing owned or occupied by them."

NORTH DAKOTA

"The questionnaire on housing does not reveal any serious civil rights problem so far as housing is concerned. If we do have problems, they are primarily due to economic considerations rather than to any discrimination or other causes that would involve issues of civil rights."

OHIO

Cincinnati

The median income for the city is $5,022 and for the Negro population $3,399.

OREGON

Eugene-Springfield area

The importance of the financial disability is suggested by the following facts: In a 1958 survey, the median income of Negro heads of households was $2,500, compared with the average income of $6,568 for the population of the area in 1957.

Eugene-Springfield area and Portland

"The improvement of housing of the Negro minority . . . is obstructed by three factors: (1) a prevailing income level which limits them to housing which is below the cost of adequate facilities; (2) resistance to their movement into the better residential areas; and (3) an apparent reluctance on the part of many Negroes to break away from the Negro neighborhoods where their friends are and where they feel more secure."

PENNSYLVANIA

Philadelphia

There is discrimination against Jews along the "Main Line."

Pittsburgh

The suburb of South Hills discriminates against Jews.

TEXAS

Cause of concentration of minority groups: "social mores, tradition, custom, and, also, economic factors." There is no "material difference, by and large, in so-called discriminatory practices in Texas than currently exist throughout the country."

UTAH

The median income for Negroes in 1950 was $1,897 and that for whites $2,047.

This does not bar the element of discrimination. New cities have sprung up outside of Salt Lake City and Ogden, Utah. Kearns, for example, is such a city which bars nonwhites. Since this is a low-cost development requiring only a token downpayment, it is within the financial reach of members of minority groups. But regardless of ability to pay, no Negro, Indian, or Mexican is allowed to purchase a home there.

There are 1,500 Jews and 8,000 Greeks in the State and there is no discrimination practiced against them.

"The Indian is a real enigma. Even today, when he may vote, even while residing on reservation, when his children attend fully integrated white schools,

when he is experiencing a new era of economic betterment growing out of the development of mineral deposits on his lands and reimbursement for past depredations by the white man (Colorado Judgment, $32,000,000) even with all of these improvements, he is still inordinately shy, unprepared for any sort of real assimilation into urban society, unskilled for urban employment. His biggest fear is 'termination', a word promising him a deed to his share of the reservation, freedom from his status as a ward of the Government, and equal status with (as well as all of the anxieties and financial responsibilities of) his palefaced cousin—none of which does he want.

"The Mexican-American or Spanish-speaking-American experiences many of the difficulties of the Indian with whom he has often intermarried . . . he has little training, often cannot adequately speak the English language. . . ."

WASHINGTON

Seattle

Discrimination against Jews is practiced in the following communities around and in Seattle: the new suburbs of Mercerwood in Mercer Island, Brydel Wood in Bellevue, and the older communities of Broadmoor, Highlands, Sands Point Country Club, Windermere.

Choice is a factor in the nonwhite's continuing to live in his present situation. "Some are reluctant to live among persons of differing ethnic background; others refuse to become the first Negroes to pioneer into an all-white neighborhood."

Yakima

". . . discrimination against Negroes and Orientals in housing is less evident, though such families tend to be found in substandard housing chiefly through their economic inability to pay the high prices and rents asked on today's inflationary market."

WEST VIRGINIA

Low income prevents all races from acquiring adequate housing, but ". . . it is evident there is definitely discrimination practiced on a universal basis."

* * *

At the Commission's National Conference of State Advisory Committees, former Governor Charles A. Sprague, of Oregon, presented a synopsis of the findings and conclusions of the six housing roundtables. The following is an excerpt from that presentation:

"Partly, this concentration [of minority groups] is due to the desire for fellowship among people of their own group. But, usually, it is enforced by economic or social compulsions.

"Discrimination also prevailed against Oriental groups where they were numerous; but since the Second World War discrimination against Orientials has been largely eliminated. The problem, then, of segregation in housing in cities seems to adhere almost exclusively to members of the Negro race.

"It was reported in some sections that in resort areas Jews suffered some discrimination in acquiring suitable housing. With respect to Indians, housing is reported to be inferior on most reservations, and apt to be segregated in cities adjacent to Indian reservations where Indians have removed. The problem with Indians, however, was not primarily one of racial discrimination, but of economic and cultural status.

"In rural areas of the South the chief problem with respect to housing arises from the low-income level of the Negroes."

4. EFFECTS OF THE HOUSING INEQUALITIES OF MINORITIES

Some of the effects of the housing inequalities of minorities can be seen with the eye, some can be shown by statistics, some can only be measured in the mind and heart.

The Mayor of Atlanta took the Commission to one of the worst slums in the country, Buttermilk Bottom. No one who has walked through these unpaved alleys, followed by ragged children who are growing up in over-crowded tenements and shacks, can doubt that slums breed disease, demoralization, juvenile delinquency, and crime. Since some two-thirds of the slum families in most major cities are colored, as they were in Buttermilk Bottom, we were not surprised by the evidence submitted in each of Commission's hearings concerning the human effects of this inferior housing.

Some of the firsthand testimony will be hard to forget. A Puerto Rican witness described the conditions in the New York neighborhood where he and thousands of other Americans live:

> East Harlem is a rent jungle, where four filthy rooms and a kitchen brings the landlord the unheard-of rental of $139 a month. East Harlem is a place where 10 and 11 human beings have been crowded into one room. East Harlem is a place where a decontrolled apartment is subdivided into eight cubbyholes, filthy cubbyholes at that, where tenants are afraid to put their lights out at night for fear of rats. . . .[75]

A New York housing official described one building he had inspected which housed 25 families with six or seven persons living in a single room; it had only one toilet for all these families.[76]

"For many, charity begins at home," Jackie Robinson testified, "So do hate, hostility, and delinquency, especially when the home invironment is a slum, lacking adequate space, lacking facilities, but not lacking for high rentals, while infested with insects and rodents." [77]

The President of the Protestant Council of New York testified that overcrowded slum living "inevitably strains family life, induces frustration, encourages immorality, breeds violence, and cripples the minds and bodies of growing children." He called it "a form of infanticide.[78]

These statements are borne out by statistics. A report of the New York Academy of Medicine reported that the estimated substandard 20 percent of metropolitan areas accounted for 60 percent of these areas' tuberculosis, 55 percent of their juvenile delinquency, and 45 percent of their major crimes.[79] Congested areas can be found by

[75] *Id.* at 391.
[76] *Id.* at 149.
[77] *Id.* at 270.
[78] *Id.* at 322.
[79] *Ibid.* See January 1954 *Report of Committee on Public Health,* New York Academy of Medicine.

looking for the neighborhoods that report the highest rates of tuberculosis and infant mortality, the greater incidence of fires, and a disproportionately high ratio of juvenile delinquency. This same substandard 20 percent of the urban area accounts for approximately 35 percent of the fires.[80]

The relation between bad housing and crime was evident in New York long before Negroes took over most of the worst housing. Crime and juvenile delinquency were common among each new group of immigrants, when they lived in the central city slums. As they moved from these centers to better outlying neighborhoods, their high crime and delinquency rates declined sharply.[81]

This observation was supported by the executive director of the Southeast Chicago Commission, Mr. Julian Levi, who stated:

> There is a definite correlation. It is so close, in fact, that we can take certain crimes, put them on a map, and speculate pretty well as to the character of housing which is there.[82]

In Atlanta the chairman of the Citizens' Crime Committee testified that the striking correlation between bad housing and crime put the relatively high rate of Negro crime in its right perspective.

The ratio of Negro offenses to population in Atlanta far exceeds the rates for whites in all reported kinds of crime, except auto theft and negligent homicide. Predominantly Negro areas have a higher than average rate of juvenile delinquency. But the Crime Committee also found one predominantly Negro census tract where there was a high incidence of Negro home ownership that was as free of juvenile delinquency as the most favorable white neighborhood. It found another predominantly white census tract where there were a large number of white migrants from rural areas with a rate of juvenile delinquency as high as that of any Negro neighborhood in the city.[83]

The incidence of juvenile crime was found to be heaviest in areas where housing is dilapidated, poverty widespread, living conditions overcrowded, and home ownership low. The geographic location of adult offenses and offenders was not readily available, but the Crime Committee concluded from its studies of the location of juvenile delinquents that factors other than race caused the high rate of Negro offenses. It further concluded that several environmental factors were decisive. Most important was the breakdown of the home. This breakdown, it concluded was hastened not merely by bad slum neighborhoods but also by the loss of self-respect of recent farm migrants to the city. Inadequately trained parents are often overwhelmed by

[80] *Id.* at 301.
[81] *Id.* at 204.
[82] *Id.* at 882.
[83] *Id.* at 571, 573.

urban life, take the lowest status jobs, settle in the worse neighborhoods, and lose the confidence of their children.[84]

The chairman of Atlanta's Crime Committee had further evidence of this from his own business experience. As the developer of Highpoint, a middle-income housing project occupied by 452 Negro families, many of whom came from areas having "incredibly high" crime and delinquency rates, he had reason to be concerned. But the delinquency rate at Highpoint has turned out to be "no more than in any other respectable middle-class community." [85] He concluded that, "Personal cleanliness, sex habits, and propriety of home life are all factors which are almost absolutely controlled by the amount of and quality of housing available to the family." [86]

While that statement probably places too much emphasis on housing, there is no doubt that lack of privacy and lack of a home in which one can take pride is a major cause of family and social demoralization. In a home where the parents care for the child and have a sense of purpose or achievement, there is seldom serious delinquency.[87] The poverty, overcrowding, sordidness, hopelessness, and constant discouragement of slum living dangerously augment the other daily irritations and frustrations that contribute to family conflicts and the broken home.[88] When success in the form of increased income does not enable a colored American to escape from these overcrowded areas, the impulse must be powerful to seek escape and immediate satisfactions outside the home, whether it be through an expensive car, drinking, or other displays and diversions. When the satisfaction of obtaining or making a better home for one's children in a good neighborhood is denied, the incentive for sacrificing immediate pleasures to achieve more lasting satisfactions is undermined if not destroyed.[89]

Justice Justine Wise Polier, for 23 years a judge in the Children's Court and Family Court of New York City, emphasized the close relationship between the housing and family conditions of young people and their misconduct. In a study of 500 children who came into her court, she found that the majority of these were living in substandard housing areas, and an even higher percentage came from broken homes.[90]

A common denominator of the defendants in her court is "fear of the real world, an awareness of low family status, beyond anything that people who do not meet with these little children may realize,

[84] *Id.* at 561, 570–72.
[85] *Id.* at 568, 570.
[86] *Id.* at 569.
[87] *Id.* at 203.
[88] *Id.* at 206.
[89] *Id.* at 207.
[90] *Id.* at 202.

little sense of personal worth and terrible discouragement as to their own future." [91] Living in a slum, knowing that it is a Negro area and that Negroes are kept out of good neighborhoods, seeing all around him badges of inferiority and discrimination that "violate a child's sense of justice, certainly his respect for himself," the young Negro loses his ability "to reach out and function up to his capacity," Justice Polier testified.[92]

Thus their housing conditions are a major factor in the vicious circle in which most colored Americans are caught. Increasingly they are "the only large groups remaining in our city slum areas" and as such they are "subjected as no other groups to the fire hazards, the dirt, the ugliness, and the sordid influences characteristic of slum areas." Colored children notice all this and see that they are "surrounded by people who have failed or seemed to fail in terms of our competitive society." It is not surprising that the defeatist attitudes toward life all around them are impressed on these children.[93]

Rising out of these circumstances, according to Justice Polier, is a "sense of hopelessness about what education can mean when they go to work." [94] Though a few gifted individuals may surmount it, slum life is not conducive to good work in school. From the Negro slum dwellers' viewpoint, education is not readily seen as a passport to a better life. The sense of futility is manifested in low achievement.[95]

To make matters worse, the schools available to slum dwellers are usually inferior. Located in the oldest sections of cities, they are likely to be antiquated and overcrowded as well as segregated in fact although not by law.[96]

In Chicago the Commission was told that as of the February 1959 semester, 26,155 grade school children in 44 schools were on double shifts, and that no less than two-thirds of these children were Negroes. Yet the Negro children represent the minority of Chicago's public school students. The grade and grammar schools with the largest enrollments are either all-Negro or practically all-Negro.[97] Rabbi Richard Hirsch asked: "To what avail is the principle of nonsegregated education when, because of segregated housing, 100,000 Negro children attend Chicago public schools where there are no white children?" [98]

In New York there are 16 junior high schools where 85 percent or more of the children are nonwhite and 52 junior high schools where 85

[91] *Id.* at 203.
[92] *Id.* at 202–204.
[93] *Id.* at 204–205.
[94] *Id.* at 204.
[95] *Id.* at 205–206.
[96] *Id.* at 322, 325.
[97] *Id.* at 822.
[98] *Id.* at 812.

percent or more are white, in many cases 99 percent white.[99] A member of the New York City School Board testified that in junior high schools composed of minority-group students, "the facilities are often the oldest, the background of the children the poorest, the learning motivation the weakest, the teaching the least efficient and thus because of these overcrowded housing conditions . . . children who are already disadvantaged from the beginning have laid upon their future and their hearts the insuperable burden of the evils of inferior schools." This School Board member testified that children from the areas of Negro concentration are two and a half years behind other children in reading.[1]

Because the predominantly nonwhite schools are located in undesirable areas, where few teachers are likely themselves to live, the task of enlisting teachers for these schools is difficult. The percentage of substitute teachers in predominantly Negro schools is 30 percent higher than in other New York City schools.[2] The School Board member summed up this aspect of the vicious circle thus:

> Teachers do not want to go into these areas because the children have not had the advantages of other children—and so the children who have not had the advantages of other children are doomed to continue to be disadvantaged because they have not had the advantages.[3]

The whole city suffers from these effects of minority housing inequalities. Disease, fire, building deterioration, and crime create major items in any city's budget. The movement of higher-income residents to the suburbs, leaving the lowest income groups in the central city, increases the city's costs while cutting its revenues. It is estimated that the substandard 20 percent of our urban centers, containing some 33 percent of the urban population, accounts for 45 percent of the total city costs but yields only 6 percent of the real estate tax revenues.[4] Moreover, the low income concentration in the center hurts the city's economic life. In Atlanta, the U.S. Department of Commerce estimates that some 60 percent of consumer buying is done outside downtown areas.[5] An Atlanta official concluded from all this that:

> There is an immutable law of social accounting. By this law communities pay the price of good housing and a decent social order always and inevitably. The only question is whether the community gets the housing and proper social order, for pay for these the community will, whether it obtains these blessings or not. The failure of a community to discharge

[99] *Id.* at 209.
[1] *Id.* at 322, 325.
[2] *Id.* at 209, 322.
[3] *Id.* at 325. See also *Toward the Integration of Our Schools*, Final Report of the Commission on Integration of the Board of Education of the City of New York, June 13, 1958, pp. 7–9.
[4] *Id.* at 301.
[5] *Id.* at 524–25.

its responsibilities in housing and leadership will inevitably produce high taxes in the form of police and prison charges, the toll of disease, and the cost of added health services.[6]

The deepest injury to the city, however, is not measurable in money. "All of our community institutions reflect the pattern of housing," said the president of the Protestant Council of New York. "It is indescribable, the amount of frustration and bitterness, sometimes carefully shielded, but the anger and resentment in these areas can scarcely be overestimated and can hardly be described; and this kind of bitterness is bound to seep, as it has already seeped, but increasingly, into our whole body politic." He said he could "think of nothing that is more dangerous to the nation's health, moral health as well as physical health, than the matter of these ghettos." [7]

Some of these effects are long in coming to the surface. Justice Polier testified that "over and over again in our complex world of urban areas one finds the child who has been suffering deprivation and hurt for years not known to or not noticed by neighbors, teacher, or minister until finally the child turns upon and acts against some other person or against the community by which he has so long been neglected." [8]

So another effect of this pattern of restricted and inferior housing for minorities is a lack of sense of personal responsibility, an almost inevitable moral callousness—in both suburbs and slums. Disraeli is said to have remarked that there was hardly a woman in England who would not be more disturbed by the smashing of the joint of her small finger in a carriage door than by hearing that a million children had died of famine the preceding week in China. The distance between a green suburb of white people and the city slums of Negroes may be as great as that between England and China. As Justice Polier said, "We rarely have enough imagination to understand or to be moved by the suffering of others that we either do not see or know about directly." [9] She added: "We have in New York today, in this great city, over 1,600 children almost on every night known to be in need of placement outside of their own homes, for whom we have not got adequate foster home care." A large proportion of these children are Negro or Puerto Rican. The lack is not of families willing to take the children, but of homes that can meet the minimal requirements of adequate housing.[10]

Thousands of children, Justice Polier testified, are left "in shelters month after month and year after year, and even in well-baby wards and hospitals," prevented from "having their childhood experiences

[6] *Id.* at 572.
[7] *Id.* at 325. See also 812.
[8] *Id.* at 207.
[9] *Ibid.*
[10] *Id.* at 208.

in a happy family." [11] The Justice concluded with the question that rises out of all this: What kind of a citizen will the child become who grows up seeing or suffering these inequities?

> . . . We have talked a great deal . . . about freedom, equality, the human dignity, the fact that man is made in the image of God . . . what happens to the inner values of the child which constantly sees this conflict, this process, this vast gap? [12]

This leads to the most tragic part of the vicious circle. The effect of slums, discrimination, and inequalities is more slums, discrimination, and inequalities. Prejudice feeds on the conditions caused by prejudice. Restricted slum living produces demoralized human beings—and their demoralization then becomes a reason for "keeping them in their place." Negro communities in the central city slums, a New York State housing official warned, are developing "into a kind of social and economic limbo from which there will be no escape."

Not only are children denied opportunities but the city and nation are deprived of their talents and productive power.[13] The former Secretary of Health, Education, and Welfare estimated this national economic loss at 30 billion dollars a year, representing the diminution in productive power of those who by virtue of the status imposed upon them were unable to produce their full potential.[14]

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[11] *Ibid.*

[12] *Id.* at 216.

[13] *Id.* at 152.

[14] Regional Hearings, p. 250.

In response to written questions from the Commission, the Secretary of Health, Education, and Welfare submitted information pertinent to the housing study, from which the following excerpts are taken:

"Communicable diseases, such as the respiratory diseases, especially tuberculosis and pneumonia, and enteric diseases, such as dysentery, are increased in low economic groups living in crowded conditions where sanitation is poor. * * *

"It has been very well established by numerous studies that certain areas, particularly in urban communities, characterized as over-crowded, with dilapidated and substandard housing, produce a disproportionately high number of delinquents. These same areas show also a disproportionately high degree of other health and social pathology such as disease, crime, economic deprivation, infant mortality, illegitimacy, etc. Also, many studies have shown that delinquents live under bad housing conditions to a greater extent than non-delinquents." (Department of Health, Education and Welfare, reply to questionnaire of Commission on Civil Rights, July 1, 1959, pp. 2, 3.)

The Department cited several "outstanding studies or reports that support these findings": Shaw, C. R.; McKay, H. D., and others, *Juvenile Delinquency and Urban Areas,* University of Chicago Press; National Commission on Law Observance and Enforcement, *Report on the Causes of Crime,* Vol. 2, 1931, especially p. 108; Federal Emergency Administration of Public Works, Housing Division, *The Relation Between Housing and Delinquency,* Washington 1936; Glueck, Sheldon, and Eleanor, *Unraveling Juvenile Delinquency,* The Commonwealth Fund, New York 1950; *Children and Youth at the Midcentury;* A Chart Book, U.S. Children's Bureau, 1950 (one chart "shows that juvenile delinqueney was 20 times more abundant in four slum areas than in four good areas; tuberculosis, 12 times; infant mortality, 2½ times"); *Juvenile Delinquency* Report of the Committee on the Judiciary, U.S. Senate, Subcommittee on Juvenile Delinquency, Report No. 130, Washington 1957.

The Department's reply concerning housing is printed in the appendix of the Washington Hearing.

Finally, these inequalities reach beyond matters of four walls, plumbing, and central heating, beyond even the national economy. The repercussions are heard around the world. A member of the United States Senate with a far-ranging experience in foreign affairs testified that there is "no single domestic policy of the United States which has a more adverse impact on the standing of the United States in the world than our failure up to date to measurably meet and deal with the problem" of racial discrimination.[15] Another witness, an international banker, stressed that "the colored races are coming into their own gradually throughout the world. We need them as friends. We are in a very poor way to cultivate their friendship if they can point to discriminatory practices against the colored peoples, our own fellow citizens, in this country.[16]

Thus not the least effect of the inequalities in housing is the doubt it casts throughout the world on our moral capacity for the leadership expected of us.

State Advisory Committee Reports

With but few exceptions, the State Advisory Committees noted the correlation between poor housing and crime, disease, fire and various social disorders. There was some difference of opinion, however, as to the cause-and-effect relationship. The facts, statistics, and opinions in the following excerpts are those given by the respective State committees and have not been verified by the Commission.

ALASKA

"Problems of crime, disease, deliquency, etc., in minority group housing areas have normally not been a result of inadequate housing. . . . When these problems have existed . . . they existed because many individuals moved into the areas for purposes of prostitution, unregulated liquor sales, etc. These conditions for the most part have been because of inadequate law enforcement, principally outside of incorporated areas."

COLORADO

Segregated housing results in *de facto* segregation in schools. It has resulted in "declined neighborhood standards, and the development of intergroup fear and distrust, which could breed conflict, tension, disharmony, crime, and unsocial practices. . . ."

DELAWARE

"Separated from each other at the outset, residentially, whites and Negroes never get to know each other as human beings. They know one another only through stereotypes. . . . Negro children for the most part, being reared in least attractive home settings, begin with 'two strikes against them.'

"A community is an integral organism; lesion in one part of it affects all other parts of the community. . . . It is difficult to disassociate the economic,

[15] Senator Jacob Javits, *id.* at 257.

[16] Earl B. Schwulst, president of the Bowery Savings Bank, *id.* at 37.

the social and political life of the community, even on a color base. . . . The great interdependence of all people within a community makes it impossible for a dominant group to inflict penalties on minority groups without being penalized itself. Prejudice may result not only in guilt, tension, and projection, but in rigidity of mind and a compulsiveness in adjustment that blocks a realistic appraisal of racial problems. . . . Another psychological consequence of prejudice is the development of ambivalent and contradictory views of life. This must necessarily obtain when a person is taught a democratic and Christian ideology and at the same time is taught a contrary ideology for intergroup relations."

INDIANA

"There is a general concensus of opinion among law enforcement and health officers that there is a direct correlation between bad housing and community problems. . . . In the areas where minority groups have secured adequate housing, the results have lessened community problems.

The segregated housing patterns result in segregated schools to a major extent in the State of Indiana."

Fort Wayne

The costs of maintaining substandard housing areas are excessive. In one such area (Rolling Mill), there is an estimated loss in taxes of $35,000, and in another such section (Brackenridge), a loss of $83,524. This is based on an estimated tax of $142 per year for a building maintained in good condition and when old and dilapidated an estimated tax of only $66 per year.

KANSAS

"In every community there is a high correlation between the incidence of crime and bad housing areas." This is true of white and Negro areas of similar condition.

Kansas City, Topeka, and Wichita

"There tends to be segregation in schools because of the large size of the minority group district and the likelihood that a given school would serve the people in that district alone."

KENTUCKY

"The evil effects of slum housing are well known. . . . There is no evidence that the effects of slum housing on Negroes is any worse than it is on the white slum dwellers.

"Prior to 1955 schools in Lexington were segregated. Since that time the Lexington School Board has had a policy of allowing every child to go to the school of his choice. . . . Since 1955 experience is too limited to say that segregated housing results in segregated schools. Commonsense indicates it would have that effect if a child were required to go to school in the district in which he lives, but under the Board's policy of choice, the effect remains to be seen."

MARYLAND

Baltimore

Crime rates are higher in segregated areas than in nonsegregated areas.

Segregated housing results in segregated schools.

MASSACHUSETTS

Boston

"An interesting observation is made by the Police Department of the City of Boston. In their opinion, substandard housing, or so-called slum areas, are not a contributing factor to juvenile delinquency."

MINNESOTA

Minneapolis and St. Paul

There is an "increasing proportion of Negro students attending each of a few schools in [these cities] without a corresponding increase in the proportion of Negroes attending any other schools. . . ."

MISSOURI

"School integration is still a myth, in over 50 percent of the communities in Missouri, due to segregated housing patterns."

St. Louis

Segregation in housing results in *de facto* segregation of schools.

Crime rates are higher in segregated areas than in non-segregated areas.

NEBRASKA

Omaha

"Admittedly there is a correlation between substandard housing . . . and various forms of social disorder." However, this does not necessarily mean "that there is a casual connection between discrimination and all existing social disorders; [or] that substandard housing itself is in all instances the cause of crime, disease, juvenile delinquency. The problems of social maladjustments are too complex and involved to relate them specifically to any single factor or set of circumstances."

Segregated housing patterns result in segregated schools. "This is especially the case with elementary schools and to a lesser extent with secondary schools."

NEVADA

Las Vegas

"There is a correlation between bad housing or segregation and community problems."

"The segregated housing patterns result in segregated schools from kindergarten through six level."

The minority slum area called Westside houses 20 percent of the city's population, but it accounts for "30 percent of the claimants on the Nevada Industrial Commission (unemployment), 40 percent of the American Red Cross funds, 44 percent of Public Assistance funds . . . and 55 percent of the [recipients thereof]." The Fire Department spends $80,000 (78 percent of the deaths from fire occurred in this area) and the Police Department $100,000 of their respective budgets, while the real estate and personal property taxes amount to only $43,000 in this area.

Reno

"Segregated housing patterns have not resulted in segregated schools because the segregated areas are not sufficiently large to constitute complete school districts."

NEW MEXICO

Albuquerque

"There is a tendency for people to attend school, to attend church, and to have their recreation in their own neighborhoods. As for school attendance, children

are required to go to their neighborhood school except that they have exceptional permission. How then expect integration in education for those children for whom housing is segregated?"

NEW YORK

"Segregated living areas are created and maintained, thus perpetuating *de facto* segregation in schools and other public places and contributing to numerous other social evils."

OHIO

"As a result of the limited opportunity to acquire or occupy real estate, forced occupancy in dilapidated areas, exorbitant rentals or payments and overcrowding, (and not because of the occupancy by minorities) crime, delinquency, disease, interracial relations, public education . . . within such restricted areas are unfavorable. This is frequently presented as the result of minority group occupancy or ownership, rather than a result of the economic consequences which flow from the residential patterns prevailing."

Cincinnati

The worst slum area, the Basin, accounts for 26 percent of the population, but "pays [for] only 6 percent of the services it needs."

Comparison of death rates per 100,000 persons for the Basin population with hilltop residents for the years 1949–51: death from tuberculosis was five times higher for white persons and 2½ times higher for Negroes in the Basin than on the hilltop; infant mortality rate was three times higher for whites. Death from pneumonia was 2½ times higher for whites and 1¾ times higher for Negroes; infant mortality was three times higher for whites. The Basin accounts for 26 percent of the population of Cincinnati, yet in 1955, 50 percent of all juvenile arrests originated there, and of 7,031 criminal offenses committed in that year 3,830, or 54.5 percent, occurred in the Basin.

"The statistics show beyond peradventure of doubt that a decidedly unequal chance for life exists in different sections of the city."

Cleveland

Housing segregation has resulted in segregated schools which are overcrowded, have split sessions, double student loads for teachers and ancient buildings which cannot help but provide an inferior education.

OREGON

Portland

"One school is 98 percent Negro, another 84 percent Negro. The fact that Negroes live in virtually every one of the census tracts of the city means that there are probably no all-white public schools. High schools having larger districts show less segregation than elementary schools."

Evidence of the disruption of family life is the fact that in an elementary school, situated in a slum area, with 98 percent Negro enrollment, 42.5 percent of the children were found to have only one parent, and in all cases the parent was employed.

PENNSYLVANIA

"Because children attend schools near their homes, housing segregation produces segregated schools even where school authorities wish to avoid such segregation."

Pittsburgh

"The Pittsburgh Commission on Human Relations reports that over 50 percent of Negro elementary school pupils attend schools in which 80 percent or more of the children are Negro."

RHODE ISLAND

Providence

Three schools, "Jenkins Street, Benefit Street, and The Thomas Doyle, have student bodies in which Negroes constitute more than 95 percent of the total enrollment . . . a consequence of the racial patterns of residence."

TEXAS

"As is the case throughout the United States, so in Texas. Inadequate and substandard housing results in a greater incidence of crime, juvenile delinquency, disease, etc. This generalization, however, is true for both the majority and the minority groups."

WASHINGTON

Seattle

"There are a number of grade schools which are predominantly Negro in population, a situation due not to school or city policies but to the fact that Negroes, for the most part, are forced to reside in areas served by these schools. In addition to such grade schools, at least one Seattle high school is becoming predominantly Negro in population."

B. What Is Being Done To Meet These Needs and Problems

"The legitimate object of government," said Lincoln, "is to do for the people what needs to be done, but which they cannot, by individual effort, do at all, or do so well, for themselves." [1]

In appraising the laws and policies of the Federal Government respecting the equal protection of the laws in housing, the Commission first surveyed both the general housing needs of the nation and the special housing problems of minorities. It found, as has been set forth above, that the special disabilities of colored Americans and the general metropolitan housing crisis are two parts of one problem, which will be solved together or not at all.

The problem as President Eisenhower has stated it is "to assure equal opportunity for all of our citizens to acquire, within their means, good and well-located homes." [2] The needs of colored Americans for equal opportunity and the needs of low-income Americans generally for good, well-located homes within their means are clear and pressing. The main question is how will these needs be met?

To answer this, the Commission sought to appraise the progress now being made by government on all levels or by the people themselves through private and voluntary action. What follows first is a survey of the laws, policies, and housing programs of city and State governments, where the initial responsibility rests. For the most part, Federal housing programs depend on either city and State initiative or private initiative or a combination of these. Federal aid to

[1] "Fragment on Government," July 1, 1854, Roy P. Basler, ed., *The Collected Works of Abraham Lincoln,* New Brunswick, N.J., Rutgers University Press, 1953, Vol. II, p. 221.

[2] Message to Congress, January 25, 1954, 100 *Cong. Rec.* 738.

public housing and urban renewal depends on the enactment of State and city enabling legislation and the establishment of local housing authorities. Urban renewal also usually requires the participation of private developers. Federal loan insurance depends on mortgage applications by private parties to a private lending institution and the making of a loan by that institution. With the exception of certain Federal requirements examined later, including some relating directly to the problem of discrimination, the polices of these various housing programs are determined at the local level by local authorities.

The Commission held housing hearings in three major cities—New York, Atlanta, and Chicago—each representing a different approach to racial relations in housing. After this view of what is being done on the city and State level, an appraisal follows of what is being done by the Federal Government and by the people themselves.

CHAPTER III. CITY AND STATE LAWS, POLICIES, AND HOUSING PROGRAMS

1. Cities and States With Laws, Policies, and Programs Against Discrimination in Housing

Thirteen States and some 34 cities or counties have enacted significant legislation against racial discrimination or segregation in some area of housing. In scope, these laws prohibiting discrimination vary from those limited to public housing projects, through those including all publicly-assisted housing, to those covering all multi-unit housing, public and private. In eight of these States and several of the cities there are official commissions or agencies to administer the laws. A survey and list of these laws and the State agencies administering them will be found at the end of this chapter.

Because New York State had the longest and widest experience with laws against discrimination in publicly-assisted housing and New York City had a law against discrimination in private housing, and because they were the most populous State and city, respectively, in the Union, with enormous racial problems, the Commission decided to hold its first public hearings on discrimination in housing there. It heard firsthand testimony from city and State officials and community, business, and minority leaders on the effects of these laws and enforcement programs. The Commission was impressed with the seriousness of purpose and goodwill shown by all concerned and with the many varied efforts under way to eliminate the considerable discrimination in housing that all agreed existed.

In the past, New York has faced and solved many housing and other problems of foreign-born minorities, and in time New York and all other great American cities will no doubt solve the current racial problems. In the New York hearing, Mayor Robert F. Wagner pointed out that New York City has more foreign-born Italians than the total population of Florence, Italy; more Puerto Ricans than San Juan; more residents of German birth than Bonn; more Irish-born residents than the combined population of Cork and Limerick; more Russian-born residents than either Minsk or Pinsk; and more Jews than in the entire State of Israel; and that the city's Negro population of over 950,000 is substantially larger than the combined Negro populations of the capital cities of all of the States of the South.[1] The Puerto

[1] Regional Hearings, pp. 10–11.

Rican population is rapidly approaching the Negro population. As of January, 1958, it was estimated that 618,000 persons of Puerto Rican origin lived in New York City. Annual Puerto Rican migration to the city averaged 34,478 from 1950 to 1957.[2] Between 1940 and 1957 more than 650,000 nonwhites and Puerto Ricans migrated to the city.[3]

Thus New York is, as it has long been, a school for Americanization, for integration, and for democracy.

Mayor Wagner recounted the city's record of legislative and administrative action against discrimination in housing. It included the City Council's amendment to the Administrative Code in 1944 to provide for denial of tax exemption for housing developments with discriminatory practices; the 1951 Brown-Isaacs law that provided penalties for landlords who discriminated in housing developments receiving various types of city and Federal assistance; the first Sharkey-Brown-Isaacs Law in 1954, which banned discrimination in multiple dwellings covered by government mortgage insurance; and the 1957 Fair Housing Practices Law barring discrimination in private multiple dwellings and in developments of 10 or more homes.[4]

This last law, administered by the City Commission on Intergroup Relations (COIR), covers about 70 percent of the city's housing supply compared with about 7 percent that is covered by the State law against discrimination in publicly assisted housing, administered by the State Commission Against Discrimination (SCAD).[5]

The Governor of New York State and the Mayor of New York City explained the basic purpose of this legislation. "We know that substandard and segregated housing causes a demoralization that we cannot afford among any part of our people," Governor Rockefeller said. "We know that the Constitution and the American purpose require us to end these conditions and to create truly democratic communities with decent standards of life for all."[6] Mayor Wagner said that the city had come to recognize that discrimination in housing was not only wrong in itself but that it would "necessarily stunt and distort the natural growth of our city and frustrate constructive programs for the welfare of the people. . . ."[7]

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[2] *Id.* at 147–148, 162.

[3] *Id.* at 123. *Facts & Figures*, edition of Apr. 1, 1958. Migration Division, Dept. of Labor, Commonwealth of Puerto Rico. For the years 1956, 1957 and 1958 the Commission was told that the migration of persons of Puerto Rican origin totaled 34,000, 22,600 and 17,600 respectively (*id.* at 386).

[4] *Id.* at 12–13.

[5] *Id.* at 81.

[6] *Id.* at 8.

[7] *Id.* at 11.

The City Council declared the public policy of New York in the following terms in the 1957 ordinance prohibiting discrimination and segregation in private dwellings:

> In the city of New York, with its great cosmopolitan population made up of large numbers of people of every race, color, religion, national origin, and ancestry, many persons have been compelled to live in circumscribed sections under substandard, unhealthful, unsanitary and crowded living conditions because of discrimination and segregation in housing. These conditions have caused increased mortality, morbidity, delinquency, risk of fire, intergroup tension, loss of tax revenue and other evils. As a result, the peace, health, safety, and general welfare of the entire city and all its inhabitants are threatened. Such segregation in housing also necessarily results in other forms of segregation and discrimination which are against the policy of the State of New York. It results in racial segregation in public schools and other public facilities, which is condemned by the constitutions of our State and nation. In order to guard against these evils, it is necessary to assure all inhabitants of the city equal opportunity to obtain living quarters, regardless of race, color, religion, national origin, or ancestry.
>
> It is hereby declared to be the policy of the city to assure equal opportunity to all residents to live in decent, sanitary, and healthful living quarters, regardless of race, color, religion, national origin, or ancestry, in order that the peace, health, safety, and general welfare of all the inhabitants of the city may be protected and insured.[8]

It is one thing to state these purposes and another to break the pattern of residential segregation already established and to open equal opportunities for decent housing throughout the metropolitan area, including the suburbs, to Negroes and Puerto Ricans. The latest city law had only been in effect ten months but Alfred J. Marrow, Chairman of COIR, ventured to say, in assessing the effects of the antidiscrimination legislation, that "outright discrimination has gone underground in New York City because the law and the positive declarations of our municipal policy have taught our citizens that discrimination can have no acceptance in our daily affairs."[9]

The way COIR has gone about its assignment is encouraging. It has concentrated on bringing about compliance through education and negotiation, working on three levels, with the controllers of residential property (the owners, real estate operators, managers, builders, and lenders), the government agencies involved, and the people in the community.[10] After COIR receives a complaint of discrimination, its intergroup relations officers conduct an investigation. Then there are "mediations in the field." If these are not successful, conciliation conferences conducted by members of the commission follow. Only

[8] Sec. 1, ch. 41, title X, Administrative Code of City of New York.
[9] Regional Hearings, p. 74.
[10] *Id.* at 78.

if these fail are there formal hearings by the commission and finally, before court enforcement action is taken, there is review by a special panel appointed by the Mayor.[11]

During its first thirteen months of operation under the Fair Housing Practices Law, COIR processed 325 housing discrimination complaints. Of these, 196 were closed to COIR's satisfaction without recourse to formal hearings or litigation. In about one in four of these cases one of the following results was achieved: (a) the unit at issue was rented to the complainant; (b) a satisfactory substitute unit was secured; (c) an application for a unit to be available at a later date was accepted; or (d) a unit was rented to a prototype of the complainant. The remaining 140 odd complaints included cases closed because of lack of support of the allegation, withdrawal of charges, failure to complete the required procedures, and cases falling within the jurisdiction of the State Commission Against Discrimination.[12] According to a report issued for the first six months of the Commission's administration of the law, about 87 percent of the 138 complaints then received alleged discrimination against Negroes, 5 percent involved religion, 6 percent ancestry, and 2 percent national origin.[13]

To build a network of administrative policies supporting enforcement of the law, COIR had worked out agreements with Federal housing agencies by which riders would be attached to all Federal mortgage insurance, notifying the insured parties that the local antidiscrimination laws must be observed. It was explained that the Federal Government would cease doing business with anyone found by COIR to be violating these laws.[14] Similarly, COIR works with the city Department of Welfare in the placing of tenants, with the Bureau of Real Estate, and with the Department of State, which licenses real estate brokers, to get cooperation in enforcing the law.[15]

The chairman of COIR believes its most successful educational work has been in helping people in a neighborhood find their own solutions to their problems. The problems of a neighborhood "cannot be solved without the participation of the people who live and work in it," he said.[16]

At the New York hearing, the Commission heard the story of Springfield Gardens—how a neighborhood in racial transition saved

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[11] *Id.* at 80.

[12] Supplemental Statement on the Administration and Enforcement of the Fair Housing Practices Law, April 1, 1958–May 30, 1959. Letter of July 24, 1959, Commission on Intergroup Relations, New York City.

[13] See Research Report on Aspects of Administration and Enforcement of the Fair Housing Practices Law, April 1–September 30, 1958 (regional hearings, pp. 90–91, 95).

[14] Regional Hearings, pp. 79–80.

[15] *Id.* at p. 79.

[16] *Id.* at 74.

itself from being panicked into going all-Negro and, through citizens' action, stabilized itself at least for the time being as an integrated community. It heard how COIR quietly moves into such a problem area, offers its assistance, and then steps aside to let the people themselves carry the main responsibility.[17]

COIR had only ten months' work to report at the time of our hearing but the State Commission Against Discrimination had over three years' experience administering the law against discrimination in publicly-assisted housing. The chairman of SCAD during these three years, Mr. Charles Abrams, described the method of operation:

> We use the compulsive powers very little. A verified complaint is filed, let's say, in housing, and the complaint is investigated. Then both parties are interviewed. An effort is made to determine whether there is discrimination, and if there is no discrimination the case is dismissed. If there is discrimination, a case of probable cause may be found to sustain the predicate of the complaint. If that finding is made, the law automatically compels a confidential conciliation; and in most cases we find we have been able to effect a gain through conciliatory methods, through the media of persuasion and settlement, and only in rare cases, perhaps four a year, normally—we've had more, three times as many, this year—do you go to the next step, which is a public hearing, at which three commissioners who didn't hear the case then hear the case anew and either dismiss it or enter a cease and desist order compelling compliance.[18]

Chairman Abrams did not try to give a rosy picture of what had so far been accomplished. "We're not making many gains in housing, itself," he stated candidly.[19] Gradually, he believed, the antidiscrimination laws were opening up opportunities for those nonwhites who could afford to pay the price of available housing. SCAD had been able to get the private owners of a number of development projects in and around New York City to accept Negroes in their all-white projects. In all these cases and in some other communities "the Negroes were accepted and there has been no outflux of tenants. . . ."[20]

He attributed the limited successes of SCAD to the quiet work of conciliation plus the fact that the law "also had teeth in it" in case conciliation failed.[21] One of the shortcomings in the State law, he said, is that SCAD does not have the right to initiate regulatory action.[22] By the time a project has been constructed, an applicant has been turned down because of his race, and a complaint has been filed by the applicant and processed by SCAD, the project will prob-

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[17] *Id.* at 74, 217–228.
[18] *Id.* at 153.
[19] *Id.* at 150.
[20] *Id.* at 152.
[21] *Ibid.*
[22] *Id.* at 153.

ably be all rented to white tenants and, whatever the outcome of the case, the pattern will have been set. In New York the State Attorney General may initiate action before SCAD, but the commission itself, unlike those in several other States, lacks this important power and must depend on the initiative of others.

The long waiting list of already screened and approved applications that existed for the large apartment projects of the Metropolitan Life Insurance Company before the antidiscrimination laws were enacted, and the low rate of tenant turnover, shows that if a policy of nondiscrimination is to be effective, it should be established at the time a project is first being rented or sold. The spokesman for the Metropolitan Life Insurance Company conceded that, although some nonwhite familes were now living in the projects, the antidiscrimination law had no appreciable effect on their operation.[23] Still, the presence of even a few nonwhite tenants is significant,[24] as is the testimony by Metropolitan's spokesman that this has taken place without any unusual difficulties.[25]

In this connection, the Commission was informed that in the three years of COIR's general work in the field of intergroup relations in New York City, it had received only two reports of actual violence accompanying the move-in of a minority family to a previously all-white neighborhood. In both instances, police acted swiftly to catch the young hoodlums involved.[26]

The antidiscrimination legislation does not seem to have affected adversely the construction of housing in New York. The State is reported to be far ahead in investments made in urban renewal and publicly assisted housing projects. More than $2 billion of private investment has been made subject to the laws.[27] Moreover, one of the largest private real estate builders and developers in the country, Mr. James Scheuer, testified that the experience in other States where urban renewal projects are subject to antidiscrimination statutes is the same. "The fact is," he said, "it is the very communities across the country in the Northern urban centers where integration is required where there is the most intense competition for these projects." [28]

This developer testified further that fears about the effects of these laws "simply have not materialized." The fear of a consequent in-

[23] *Id.* at 262–263.

[24] In Dorsey v. Stuyvesant Town Corporation, 299 N.Y. 512 (1949), *cert. denied,* 339 U.S. 981 (1950), Metropolitan prevailed in its policy of refusing to admit Negroes. After the case, Metropolitan as a matter of discretion adopted a policy of nondiscrimination, even before legislation requiring this was adopted (Regional Hearings, p. 262).

[25] Regional Hearings, p. 263.

[26] *Id.* at 73.

[27] *Id.* at 155, 290.

[28] *Id.* at 290.

undation by Negroes was baseless, Mr. Scheuer said, since "the very purpose of nondiscrimination legislation is to prevent inundation. . . ." Negro concentration within restricted areas leads inevitably to inundation of adjacent areas through Negro expansion block by block. "The effect of nondiscrimination legislation," he testified, "is to scatterize nonwhite housing demands so it has no impact on any one community or any one project. . . ." Mr. Scheuer further testified that he knew of no instance "of a community that has suffered a decline in property values due solely to the fact of entry of a nonwhite into a theretofore white community." [29]

No one in New York contended that laws alone will suffice to solve the problem of discrimination in housing, but most of the witnesses agreed that antidiscrimination laws play an important educational role. The spokesman for the Real Estate Board of New York, which opposed the city bill against prohibition of discrimination in private housing as unenforceable sumptuary legislation that forces people to live together if they do not wish to do so, stated that "The Real Estate Board of New York does subscribe enthusiastically to the principle that any governmentally aided financing, whether it is public housing or FHA or VA or any other governmentally assisted housing, whether by actual government money or the lending of the government's credit, should be available to all on a first-come, first-served basis." [30] Thus in New York it was merely a matter of how far the law should go in prohibiting discrimination, not whether it should do so.

Chairman Marrow of the City Commission on Intergroup Relations gave his answer to the proposition that you cannot legislate morality and that laws cannot eliminate prejudice:

> Our experience indicates that this argument takes no account of all the workings of the statutory regulation. It is true that such regulations do not at once change habits and attitudes, but it is even truer that they set moral and civic standards and enable their application. Application of these standards is our direct task, education our indirect task, and each deeply involves the other. * * *
>
> I feel without a statute supporting the work of the agency that our educational efforts would bog down. There is a tendency on the part of all people to compartmentalize their attitudes and not have them disturbed, and it is only some force stronger than custom that can persuade or motivate individuals to rethink some of their attitudes and then to reframe their practices in accordance with possibly a change in their attitudes; but they can change their practices, which is what we are most concerned with, because that will lead sooner to a change in attitude than if the practice were to continue unchanged.[31]

[29] *Id.* at 289–290.
[30] *Id.* at 234–235.
[31] *Id.* at 72, 84.

The Executive Director of COIR, Dr. Frank S. Horne, added that the whole housing "trade," including owners, builders, real estate brokers, and lending institutions, had established a concerted private policy of discrimination that had set the racial housing pattern, and that a law was necessary for "unwinding, reorienting, readjusting a powerful practice that has the buttressing of the most powerful interests that operate in our economy. . . ." Enactment and enforcement of an antidiscrimination law in this sense is a kind of education itself. "It's almost like having a compulsory education law to get kids into the school so they can be educated properly," Dr. Horne said.[32]

As evidence for the efficacy of this approach, he showed the Commission a map indicating the degree of dispersion of nonwhites outside the areas of concentration. The areas where integration has taken place were said to be areas where you could trace the effect of public policy. That is, nonwhites outside the concentrated areas were found in private and publicly-assisted housing, including the cooperative developments and the public housing projects.[33]

The public housing projects operated by the New York City Housing Authority have been a major testing ground for the city's policy of integration. With about 102,000 completed apartments and some 50,000 additional apartments underway, the New York Housing Authority is the largest single operator of residential accommodations in the country.[34] Some 450,000 members of low-income families living in these projects comprise about 5.5 percent of the city population.[35] This substantial proportion is made possible because both the State and the city have sponsored more low-income housing than is provided through the Federal housing program. Subsidies from the Federal Public Housing Administration account for only 38,000 of the New York Housing Authority apartments. State loans and State and city subsidies made possible another 38,000. City assistance through partial tax abatement and guarantee of the Authority's bonds made possible 26,000 low-rent apartments without cash subsidy.[36]

Before World War II, the city had achieved a successful pattern of integrated housing projects based on selection of tenants on a city-wide basis, with priority given to those in most urgent need. Only three projects built in concentrated minority-group areas had failed to establish a balanced integration. Until after the war, the racial occupancy patterns remained stable and the rate of turnover was

[32] *Id.* at 81, 121–122.
[33] *Id.* at 81–82.
[34] *Id.* at 134.
[35] *Id.* at 139–140.
[36] *Id.* at 134.

extremely low. The acceptance of integration during these years was said to go beyond mere residence to embrace community activities and tenant organizations as well. New York's program won national recognition as a model for open occupancy projects.[37]

Following the war this situation deteriorated. Today Negroes comprise 40,000 and Puerto Ricans 17,000 of the 102,000 families in the projects, or almost 57 percent, and they are no longer well distributed throughout the 87 different developments. Instead they constitute a majority in 49 of them. Moreover, once Negroes constitute such a high proportion in any project, the white tenants tend to leave. The "tipping point" at which this seems to happen is estimated to be when Negroes exceed 40 percent of the project.[38]

Because this trend is contrary to New York's public policy, one of the first acts of the three full-time members of the Housing Authority after their appointment on May 1, 1958, was to examine the problems of integration. They appointed a consultant on race relations in order to help restore integrated occupancy. They reported to us that the great influx of Negro and Puerto Rican migrants into substandard housing in New York was a major factor in the change in racial patterns in the housing projects. Slum clearance, urban renewal and other public improvements resulted in a growing dislocation of these minority families and their increasing predominance in public housing.[39]

Another factor is the requirement of Federal law that every family in a federally aided public housing project must pay at least one-fifth of its income for rent. As incomes rose, white families tended to move rather than pay that much, but Negro families, knowing the racial restrictions in private housing, tended to remain. The members of the Authority hope that greater flexibility will be given local authorities to set income limits at levels that will not produce this exodus.[40]

The members of the New York Housing Authority believe that the State law passed in 1957 which gives a priority to those applicants who live within a mile radius of a development will promote integrated projects.[41] This will prevent the high proportion of citywide need by nonwhites from creating predominantly nonwhite projects everywhere.

In addition, the members of the New York Authority intend to promote integrated housing projects by the selection of sites in areas conducive to integration, particularly open land sites away from minority

[37] *Ibid.*
[38] *Id.* at 135, 140.
[39] *Id.* at 135, 136.
[40] *Id.* at 135, 138.
[41] *Id.* at p. 136.

concentrations, or sites just on the edge of such concentrations. The new policy of the Authority also emphasizes the development of smaller projects which will better lend themselves to becoming a part of the surrounding community.[42]

Moreover, to win public understanding and support of this program for true housing integration, the Authority has started a community relations program under the direction of its new race relations consultant. Since most projects are located outside the areas of Negro concentration, the Authority believes that close work with the community is essential. It has established 67 community recreation centers for children and adults.[43]

Because the Authority believes that its problems of racial imbalance result largely from pressures of dislocated slum dwellers and those displaced by urban redevelopment or highway construction, it urges an increase of Federal aid to housing, including the low-rent public housing program, to check the trend toward predominately non-white projects.[44]

This same link between the problem of ending discrimination and the problem of increasing the housing supply for people of low and middle income was stressed by many of those responsible for the city and State antidiscrimination programs. The then chairman of the State Commission Against Discrimination, Mr. Abrams, stated that:

> Simply outlawing the right of a landlord to refuse housing, while it would be helpful, is not going to solve the problem unless you increase the housing supply and make it available to all people on the basis of their ability to pay.[45]

The reasons are clear enough:

> It's only where people fear that the infiltration will be followed by a mass influx that you get this resistance, and the only way you can prevent a mass influx in the cities is by increasing the housing supply in the region. . . .[46]

Mayor Wagner stressed this "dual approach". "We in the City of New York are convinced of one thing," he testified. "A legislative program to combat discrimination in housing cannot be effective without a simultaneous program to increase the housing supply."[47]

The Commission heard testimony about some of the city and State programs to increase the housing supply for low- and middle-income groups. The Limited-Profit Housing Companies Law of 1955, as

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[42] *Ibid.*
[43] *Id.* at 136–137.
[44] *Id.* at 138.
[45] *Id.* at 148.
[46] *Id.* at 153.
[47] *Id.* at 11, 152.

amended, is one of the most significant of these. It authorizes the creation of limited-profit housing companies to construct rental or cooperative housing, under the supervision of the State Division of Housing, with loans up to 90 percent of construction costs available from the Division of Housing or the municipality, and tax exemptions not to exceed 30 years on 50 percent of the project's total value or the increase in value, whichever is less.[48] Fifty-year mortgage loans are made to private enterprise sponsors at substantially the State or the city cost of borrowing the funds (approximately three percent); amortization is less than one percent and there is no insuring fee.[49] The results of this program were described to the Commission by a leading developer as "absolutely amazing". He testified that under these terms, a rent of $79 is possible for a two bedroom apartment that under FHA financing rates of 5 percent, with 2 percent amortization and one-half percent insuring fee would be $119.[50]

One particularly interesting governmental program in New York, run by the Department of Labor of the Commonwealth of Puerto Rico, deals with the problems of migration. The Commonwealth maintains in the city a Bureau of Migration to assist Puerto Rican migrants in their housing, employment, and other problems of adjustment to mainland urban life. Through Puerto Rican citizens' groups in New York it has helped organize housing clinics to show tenants how to maintain and improve housing standards and how to make use of New York laws requiring the maintenance of standards by landlords and prohibiting discrimination. It also supplies information on employment and housing opportunities and conditions to prospective migrants before they leave Puerto Rico.[51]

In testifying about these many programs under way to meet the housing needs and problems of nonwhite residents, no one in New York claimed that the end was in sight. Governor Rockefeller stressed that "we still have a long way to go in achieving our goal of making New York State a shining example of our faith in freedom and justice for all men." Rather than hide these problems of the "dark corners of prejudice and discrimination in our midst" he hoped—

> that by facing them and doing our best to solve them with good will and intelligence we can make this State a testing ground and a demonstration for the nation and the world, a place in which we apply the truths that we declare to be self-evident, a place in which we strive tirelessly and without reservation to fulfill the promises of our Constitution.[52]

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[48] *Id.* at 192.
[49] *Id.* at 288.
[50] *Ibid.*
[51] *Id.* at 215–216.
[52] *Id.* at 8, 9.

SUPPLEMENT

State and City Laws Against Discrimination in Housing and Official Agencies Administering These Laws

Thirteen States have antidiscrimination housing laws.[53]

In Michigan and Rhode Island the law is limited to a prohibition of discrimination in Government-owned public housing projects.[54] In Pennsylvania it applies only to discrimination in State-constructed veterans housing and in redevelopment projects assisted by Government through tax exemption or the assembling of land by condemnation.[55] In Minnesota and Wisconsin the legislation covers both public housing and redevelopment projects.[56] In Connecticut, New Jersey, New York, and Washington it covers the sale or rental of all Government-assisted housing, including private housing built with Government loan insurance.[57]

In these statutes, all enacted between 1939 and 1958, the housing covered is clearly affected with some public character. In 1959 Colorado, Massachusetts, Connecticut, and Oregon took the further significant step of enacting legislation prohibiting discrimination not only in all publicly assisted housing but also in private housing transactions.[58] In Colorado the prohibition applies to transactions involving all dwellings other than owner-occupied units. In Massachusetts it applies to transactions involving multiple dwellings of three or more units and housing developments of 10 or more homes. In Connecticut it includes all housing owned or controlled by any person who owns or controls five or more contiguous accommodations.

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[53] California, Colorado, Connecticut, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Washington, Wisconsin. See compilation published by the Housing and Home Finance Agency, *Nondiscrimination Statutes, Ordinances, and Resolutions Relating to Public and Private Housing and Urban Renewal Operations,* as revised October 1958. See Note, "Racial Discrimination in Housing," 107 *U. of Penn. L. Rev.* 515 (1959). In several States there is legislation prohibiting racial zoning, but since the Supreme Court has declared such zoning unconstitutional, these laws are not included here as presently significant. Illinois also prohibits the use of racially restrictive covenants in any deed or conveyance of land acquired for redevelopment. Ill. Ann. Stat. (Smith-Hurd), ch. 67½, secs. 82, 267. See also sec. 3(b), Redevelopment Act of 1945, Ind. Stat. Ann. (Burns), sec. 48–8503(b).

[54] Mich. Stat. Ann. Sec. 28–343. General Laws of Rhode Island, secs. 11–24–1, 2, 3, 4.

[55] Penn. Stat. Ann., title 35, secs. 1590.12, 1664, 1711.

[56] Minnesota also prohibits racial covenants and has a commission to study discrimination in housing for the purpose of recommending legislation. Minn. Stat. Ann., secs. 507.18, 462.481, 462.641. Wis. Stat. Ann., secs. 66.40(2m), 66.43(2m), 66.405(2m), and 66.39.

[57] Conn. Gen. Stat. sec. 3267(d) (Supp. 1955); N.J. Stat. Ann. secs. 55 : 14A–7.5 and 39.1, 55 : 14B–5.1, 55 : 14C–7.1, 55 : 14D–6.1, 55 : 14E–7.1, 55 : 14G–21, 55 : 14H–9.1, 55 : 16–8.1, 18 : 25–9.1, 18 : 25–4, 14 : 25–5K; N.Y.-McKinney's Con. L. of N.Y. Ann.; Art. 15 sec. 292; (Oregon) ch. 725, Laws of 1957; Ore. Rev. Stat. secs. 659.032–.034 (Wash.) ch. 37, Laws of 1957.

[58] Colorado bill signed Apr. 10, 1959; Massachusetts bill signed Apr. 22, 1959; Connecticut bill signed May 12, 1959; Oregon bill signed May 27, 1959. See also Mass. Ann. Laws, ch. 21, sec. 26 FF; ch. 151B, sec. 1–6; Conn. Gen. Stat. (1958 Rev.), secs. 53–34, 35, 36 (as amended 1953). (Oregon) ch. 725, Laws of 1957; Oreg. Rev. Stat., secs. 659.032–.034.

In Oregon it prohibits any person in the business of selling or leasing real property from engaging in discriminatory practices.

In several other States similar legislation is being considered.[59] In one State which has not yet gone this far there are provisions in the banking and savings and loan laws prohibiting discrimination in the granting of mortgage loans.[60]

In addition to this State legislation there have been laws, ordinances, and resolutions against discrimination or segregation in housing adopted in the following 34 cities and counties:

Phoenix, Ariz. (resolution of housing authority re public housing projects, 1955).
Fresno, Calif. (resolution of housing authority re public housing, 1952).
Los Angeles, Calif. (ordinances of city council re urban redevelopment, 1951 and 1957; resolution of Board of Supervisors of Los Angeles County re public land use, 1951).
Richmond, Calif. (resolution of housing authority re public housing, 1952).
Sacramento, Calif. (resolution of redevelopment agency re urban redevelopment, 1954; resolution of city council re urban redevelopment, 1954).
San Francisco, Calif. (resolutions of Board of Supervisors of City and County of San Francisco re urban redevelopment, 1949, and public housing, 1949 and 1950).
Denver, Colo. (ordinance of city council re restrictive covenants, 1953).
Hartford, Conn. (resolution of court of common council re public and private housing, 1949).
Wilmington, Del. (resolution of housing authority re public housing, 1953).
Washington, D.C. (resolution of housing authority re public housing, 1953).
Chicago, Ill. (resolution of housing authority re public housing, 1950; resolution of city council re public housing, 1954).
South Bend, Ind. (resolution of housing authority re public housing, 1957).
Baltimore, Md. (resolution of housing authority re public housing, 1954.)
Boston, Mass. (resolution of city council re public housing, 1948).
Detroit, Mich. (resolution of housing commission re public housing, 1952).
Pontiac, Mich. (resolutions of city commission re public housing, 1943 and 1951).
Superior Township, Mich. (resolution of Superior Township board re publicly assisted housing, 1958).
Minneapolis, Minn. (resolutions of housing and redevelopment authority re urban redevelopment, 1953 and 1954).
St. Paul, Minn. (resolutions of housing and redevelopment authority re public housing, 1950, and urban redevelopment, 1953).
St. Louis, Mo. (resolution of board of aldermen re public housing, 1953).
Omaha, Nebr. (resolution of housing authority re public housing, 1951).
Newark, N.J. (resolution of Newark Housing Authority re allocation of dwelling accommodations, 1950).
New York, N.Y. (ordinance of city council re urban redevelopment, 1944; administrative code of city council and board of estimate re city-assisted housing, 1949; local law by city council re city-assisted housing, 1951, amended 1954; local law of city council and board of estimate re private housing, 1957).
Cincinnati, Ohio (declaration of city council re urban redevelopment, 1951).

[59] Private housing bills are before the legislatures in Michigan, Ohio, Pennsylvania, and Rhode Island. See *Trends in Housing*, March–April, 1959.
[60] N.J. Stat. Ann., secs. 17–12A–78, 17 : 9A–69.

Cleveland, Ohio (ordinance of city council re public housing, 1949; ordinance of city council re redevelopment of slum and blighted areas, 1952).
Toledo, Ohio (ordinance of city council re public housing, 1951; resolution of Toledo Metropolitan Housing Authority re public housing, 1952).
Chester, Pa. (resolution of housing authority re public housing, 1955).
Delaware County, Pa. (resolution of county housing authority re public housing, 1957).
Erie, Pa. (resolution of city council re public housing, 1958; resolution of housing authority re public housing, 1958).
Philadelphia, Pa. (ordinance of city council re public housing, 1959; resolution of housing authority re public housing, 1952).
Pittsburgh, Pa. (resolution of Allegheny County Housing Authority re public housing , 1952; resolution of Housing Authority of the City of Pittsburgh re public housing, 1952).
Providence, R.I. (resolution of city council re public housing, 1950).
Pasco, Wash. (resolution of housing authority re public housing, 1951).
Superior, Wis. (resolution of housing authority re public housing, 1951).
(See compilation by Housing and Home Finance Agency, op. cit. supra n. *53*.)

In some instances, the action by city authorities has preceded, if it has not precipitated, the State legislation. For instance, the resolution of the Hartford Court of Common Council in January 1949 prohibiting discrimination or segregation in any public housing or municipally assisted private housing development within the city, apparently the first such action, included a resolution that similar action be taken on a statewide basis by the general assembly. Six months later the Connecticut Legislature prohibited discrimination in public housing projects and 4 years later the legislature extended the prohibition to all publicly assisted housing.

Moreover, the effect of city action crosses State lines. The New York City Council in December 1957 adopted the first fair housing practices law, prohibiting discrimination in private multiple-unit housing buildings with 3 or more dwelling units and in contiguous housing developments of 10 or more homes. The Pittsburgh City Council adopted a similar law which covered in December 1958 private housing comprising five or more dwelling units. Both of these actions influenced the private housing laws of Colorado, Massachusetts, Connecticut, and Oregon.

Under many of these State and city laws enforcement is entrusted to a commission which receives complaints, conducts investigations, seeks voluntary compliance through mediation, holds hearings, issues cease-and-desist orders, and seeks court sanction when necessary. New York State formed the first such State commission against discrimination in 1945 to enforce its new law prohibiting discrimination in employment. It followed the patterns set by the wartime Federal Committee on Fair Employment Practice set up by Executive order in 1941.[61] The emphasis of the Federal FEPC upon seeking voluntary

[61] Executive Order 8802, June 25, 1941.

compliance through informal negotiation and conciliation was an innovation in the field of antidiscrimination laws. Before this, a number of States had had laws against discrimination in public accommodations, but there was no official machinery for enforcement and the practice of leaving the burden of private lawsuits with injured parties proved ineffective. Following New York's lead, 14 other States established commissions to enforce antidiscrimination legislation..

The following is a list of these State agencies and their addresses:

Colorado: Antidiscrimination Commission, 655 Broadway Building, Denver 3, Colo.

Connecticut: Commission on Civil Rights, 500 Capitol Avenue, Hartford 15, Conn.

Indiana: Fair Employment Practices Commission, Division of Labor, 225 State Capitol, Indianapolis 4, Ind.

Kansas: Antidiscrimination Commission, State Office Building, Topeka, Kans.

Massachusetts: Commission Against Discrimination, 41 Tremont Street, Boston 8, Mass.

Michigan: Fair Employment Practices Commission, 900 Cadillac Square Building, Detroit 26, Mich.

Minnesota: Fair Employment Practices Commission, St. Paul 1, Minn.

New Jersey: Division Against Discrimination, Department of Education, 1100 Raymond Boulevard, Newark 5, N.J.

New Mexico: Fair Employment Practices Commission, Box 1726, Santa Fe, N. Mex.

New York: Commission Against Discrimination, 270 Broadway, New York 7, N.Y.

Oregon: Civil Rights Division, Bureau of Labor, State Office Building, Portland 1, Oreg.

Pennsylvania: Fair Employment Practice Commission, Department of Labor and Industry, 1401 Labor and Industry Building, Harrisburg, Pa.

Rhode Island: Commission Against Discrimination, Room 307, Statehouse, Providence 2, R.I.

Washington: State Board Against Discrimination, 3012 Arcade Building, Seattle 1, Wash.

Wisconsin: Fair Employment Practices Division, Industrial Commission, 794 North Jefferson Street, Milwaukee 2, Wisc.

All these States, comprising some 37 percent of the population of the United States, have laws against discrimination in employment which these State agencies are empowered to enforce. In eight of these States the agency is also authorized to prevent discrimination in places of public accommodation such as hotels, restaurants, theaters, and recreation areas.

Jurisdiction in the field of housing came later, as laws against discrimination in housing were adopted. In 1949 Connecticut was the first State to give its Commission on Civil Rights responsibility for preventing discrimination in publicly owned housing. New York in 1955 was the first to give its State Commission Against Discrimination authority to eliminate and prevent discrimination in publicly assisted private housing. As of June 30, 1959, eight State agencies

had authority to enforce their respective States' antidiscrimination housing laws. New York City in 1957 was the first city or State to give its antidiscrimination agency authority to enforce a fair housing practices law for private multiple-unit housing. The table below, adapted from the May–June 1959 issue of *Trends in Housing* shows the coverage of these laws as of June 30, 1959. There is further discussion of their application and of their constitutionality in the Note, "Discrimination in Housing", in 107 University of Pennsylvania Law Review 515–550.[62]

Table 21.—*Major State and city laws affecting discrimination in housing, as of June 30, 1959*

State	Coverage						
	Public housing	Publicly aided and/or urban renewal	FHA and VA	Private housing	Lending institutions	Advertising	Enforcement by special State agency
1. California	X	X	X				
2. Colorado*	X	X	X	X	X	X	X
3. Connecticut*	X	X	X	X			X
4. Massachusetts*	X	X	X	X			X
5. Michigan	X						
6. Minnesota	X	X					
7. New Jersey	X	X	X		X		X
8. New York	X	X	X				X
9. Oregon*	X	X	X	X		X	X
10. Pennsylvania	X	X					
11. Rhode Island	X						X
12. Washington	X	X	X		X	X	X
13. Wisconsin	X	X					

*Extent of private housing coverage:
Colorado: All except owner-occupied premises.
Connecticut: All housing sold or leased in developments of 5 or more.
Massachusetts: All apartments in multiple dwellings and houses sold in developments of 10 or more.
Oregon: Confined to prohibiting persons engaged in the business of selling or leasing real estate from discriminating.

Thirty-four cities and counties have laws or resolutions affecting discrimination in housing. They apply as follows:

New York City: This ordinance covers the leasing of all apartments in multiple dwellings (3 or more units) and the sale of houses in developments of 10 or more. Enforced by the city's Commission on Intergroup Relations.

Pittsburgh: This ordinance covers sales or rentals by persons who own or control five or more units anywhere in the city, and all activities of real estate operators and lending institutions. Also covers vacant building lots. Enforced by Pittsburgh's Commission on Human Relations.

[62] See also *Report on State Anti-Discrimination Agencies and the Laws They Administer*, Commission on Law and Social Action of the American Jewish Congress; *Fair Employment Practices at Work in Twelve States*, A Report Prepared for the Conference of Governors of Civil Rights States by New York State Commission Against Discrimination, 1957; Berger, and Morroe, *Equality By Statute: Legal Controls Over Group Discrimination*, Columbia University Press, 1950.

Public Housing: Twenty-seven cities have provisions applying to this area: Phoenix, Ariz.; Fresno, Richmond, and San Francisco, Calif.; Hartford, Conn.; Wilmington, Del.; Washington, D.C.; Chicago Ill.; South Bend, Ind.; Baltimore, Md.; Boston, Mass.; Detroit, Pontiac and Superior Township, Mich.; Minneapolis and St. Paul, Minn.; St. Louis, Mo.; Omaha, Nebr.; Newark, N.J.; Cleveland and Toledo, Ohio; Chester, Delaware County, Erie, and Philadelphia, Pa.; Providence, R.I.; Pasco, Wash.; and Superior, Wis.

Publicly assisted and/or urban redevelopment: Nine cities have provisions applying to this area: Los Angeles, Sacramento, and San Francisco, Calif.; Hartford, Conn.; Superior Township, Mich.; Minneapolis and St. Paul, Minn.; and Cincinnati and Cleveland, Ohio.

Others: Denver, Colo. (restrictive covenants).

State Advisory Committee Reports

The Commission's State Advisory Committees in States having legislation against racial discrimination in housing appraised their respective States' progress in the field and made recommendations. The facts, statistics, and opinions in the following excerpts are those given by the respective State Committees, and have not been verified by the Commission.

CALIFORNIA

Los Angeles

The Negro population tripled during the decade 1940–50. There are now arriving in Los Angeles County 3,000 families per month. One-tenth to one-twelfth are nonwhite which amounts to approximately 4,000 nonwhite families arriving per year. These families form the basis of the housing problem in this area.

"Probably the most logical solution for the newcomers would be for Public Housing to have Reception House Apartments * * * This, however, might be difficult without voters' approval, especially since we have not been able to build additional Public Housing since 1953.

"We recommend: * * * Discrimination has been displayed by the California Director of Savings and Loan in the application of minority groups for a charter to establish local associations. This we believe should be the responsibility of the State authorities whom we should alert as this investment is insured by the Federal Government.

"Government financed or insured loans for housing projects for the aged should be free of discrimination in occupancy."

COLORADO

"The Colorado Fair Housing Act is new, but it is a significant help in this educational process, inasmuch as it clearly demonstrates to all that the organized community, through their adoption of a majority law, stands firmly behind the concept of equal opportunity for housing. Wide distribution and publicity must be given to the features and provisions of this act." This legislative action, however, "is recognized as not the total answer, and the other aspects—educational, social-economic, etc., are still to be worked on * * *.

"It is predominantly true that the administration of public housing in the large cities in Colorado has a positive non-discrimination pattern * * * the public housing authority for the city and county of Denver has aggressively eliminated discrimination in the assignment of units to applicants for public housing. Dis-

tributed throughout the city of Denver are numerous housing projects that are occupied by citizens regardless of race, creed, color, national origin, or ancestry. This, in itself, is an excellent example of the baseless social and economic fears * * *.

"We believe that civic and social organizations should continue to oppose any policy advocated by builders, subdividers, etc., for planned housing developments directed toward any specific minority group on the basis of race, color, national origin, or religion. Further believe that the organization of associations and communities on any basis other than qualification, merit, financial potential and desire is inherently bad, and that such should be eliminated as rapidly as possible from any activity within the State of Colorado * * *.

"We recommend that all published and distributed advertising which has restriction, limitation, or qualifications, based on race, creed or color, be eliminated, and that any organization, builder, contractor, etc., who proposes, supports, encourages, or initiates same, be subjected to the provisions of the Colorado Fair Housing Act. We recommend that the slum clearance and urban renewal procedures in Colorado be pursued with the greatest amount of speed and that proper officials and organizations be given the full opportunity to educate the general acceptance of the principles which are involved in relocating all persons, including minority groups members, from substandard locations, and that families be relocated under nondiscriminatory concepts."

MASSACHUSETTS

"There is practically no problem of segregation in the public housing properties * * *. Massachusetts has its Committee Against Discrimination (MCAD) which investigates and enforces provisions against discrimination in housing, public accommodations, employment, etc.

"It would seem, therefore, from review of all data obtainable on this subject that there is no *acute* need of law enforcement as far as public housing segregation is concerned in this State, but that perhaps a campaign of education arousing public interest would help to alleviate the situation."

NEW YORK

"In private and publicly assisted housing the achievements to date have been less impressive than in public housing. In part this is because the laws governing it have not been in force as long. In part, too, it is because the State laws still cover only a tiny fraction of the private market * * *.

"Where compliance with the laws banning discrimination has occurred in New York, either voluntarily or through enforcement procedures, the results have been most encouraging * * *. New York's experiences indicate that sound and firmly enforced laws are not only a practical weapon, but the most effective one [to bring the housing industry to] abandon existing patterns of discrimination against minorities.

"Construction of new housing has not been deterred by the laws; instead, it has increased. New York State has more title I housing than any of five other major States for which comparable statistics are available. In recent months construction of new FHA and VA housing has been on the increase throughout the State. And in the first year after the passage of the New York City law, construction of new private dwellings in the city jumped above 30,000 units for the first time in 6 years.

"Despite perceptible advances toward its alleviation, through recent legislation at the State and local levels, housing discrimination remains a serious problem in New York."

NEW JERSEY

This Committee would support State legislation "which would make discrimination in publicly assisted housing illegal. * * *

"This Committee has considered antidiscrimination legislation in the field of purely private housing, but does not see clearly the function of government in this area.

"The Committee is aware that the problems created by discrimination in housing cannot be alleviated by law alone. Educational programs should be initiated and financed on both Federal and State levels which would seek to end such discrimination. We recognize that a truly comprehensive educational program, using mass media, churches, schools, colleges, and all other available media has never been developed. We believe that such a program should be developed and sponsored by Federal and State governments. We believe that the cost of such a program would be small when compared to the ultimate long-range advantage it would produce in our land. Included in such a program could be: assisting minority families to secure homes on an open-occupancy policy; seeking the cooperation of real-estate men and lending institutions; counseling residents and public officials; persuading community institutions to support equal opportunity in housing; and promoting understanding and support of nondiscrimination laws. We believe the programs in New Jersey and other States have amply demonstrated that results can be obtained, that persons of good will everywhere are looking for guidance and leadership."

OREGON

"In the field of housing the first act * * * was passed in 1957. It prohibited discrimination by owners or operators having contiguous units five or more in number and publicly assisted. It is fair to say that this is not a strong law and its effect thus far on the availability of housing for minorities or on the practices of owners and real estate brokers has been minimal. It has, however, had the effect of making such groups aware of the problem and of the fact that it is a matter of public concern * * * It may well have had the effect of making brokers more active in attempting to find housing for members of minority groups, but it has not opened to them a real opportunity to enter the all-white residential areas. An act of the 1959 legislature which has just adjourned greatly strengthens the law."

PENNSYLVANIA

There should be a statewide law against discrimination in housing similar to Pittsburgh's since "educational techniques are usually ineffectual against prejudice in the absence of legal prohibition against discriminatory behavior. But when buttressed by law, education has often been highly effective."

Two bills have been introduced in the State senate. One limits itself to the abolition of discrimination in publicly assisted housing and the other addresses itself to housing discrimination in both public and private housing (S. 333). Its counterpart in the House in H.R. 322, which sets forth amendments to the Pennsylvania Fair Employment Practices Act making the Fair Employment Practices Commission the Pennsylvania Civil Rights Commission with authority in the fields of public accommodations and housing, as well as employment.

"It would appear that more than voluntary efforts are necessary to erase this [housing] blight from the State scene.

"Proper legislation enacted here at the municipal, State, or Federal level should therefore be strongly urged so as to guarantee equal access to housing of his choice to any citizen of this Commonwealth. * * *

"Such legislation should prohibit discrimination in selling, leasing or financing housing accommodations by any individual or organization on the grounds of race, color, religion, creed, ancestry, or national origin.

"The coverage of such a law should extend to all housing with the exception of the personal residences of an owner who wishes to sell the property himself or any two-family structure where one unit is occupied by the owner, and housing owned by bona fide religious or charitable organizations."

RHODE ISLAND

"Almost coincidental with the appointment of this committee, Citizens United was busily drafting a fair housing bill. The idea for a fair housing bill for Rhode Island actually began in June, 1957 when the Research and Statistics Committee of the Rhode Island Committee on Discrimination in Housing began work examining statutes on the problem from many parts of the United States. In June 1958 a group of leading businessmen, bankers, realtors, home builders, clergy of all faiths, labor representatives, lawyers, etc., met to discuss fair housing principle and the need for effective legislation to promote fair housing practices in Rhode Island. These influential people decided to form a committee to draft such legislation and to sponsor it.

"Hence the birth of the Rhode Island fair housing bill, a bill designed to prohibit and prevent discriminatory practices in the selling, renting or leasing of housing accommodations based on the race or color, religion or country of ancestral origin of the applicants.

"Upon its introduction into the legislature in December 1958, under bipartisan sponsorship, developments came swiftly. The hue and cry was terrific. The press was filled almost daily. Radio and television carried debates and speeches. Hysterical hearings on the bill were held by the House Judiciary Committee when charges of Communists, etc., were hurled. Powerful and moneyed forces were at work. It is entirely possible that no single piece of legislation in modern times in this State has evoked such controversy. At present the bill is still before the House Judiciary Committee. Legislators are frankly bewildered and its fate is undecided. [The bill was defeated.]

"The advisory committee is unanimous in its general feeling of frustration in not being able to present clear-cut, well-defined recommendations as to what should be or could be done either on a National or State level."

WASHINGTON

"The State of Washington is one of the few States having 'publicly assisted housing' laws. In that respect, it is the vanguard of States which are strongly civil-rights conscious * * * The State of Washington, known for decades as a leader in progressive labor legislation, still has a long way to go before it can assume that it has made a good start on the housing problems of its people, notably minority groups."

Seattle

"Seattle's civic government has shown commendable interest in the problems of minority groups, especially in the field of housing. Decent, safe and sanitary housing that is racially integrated is definitely a part of Seattle's public policy."

Tacoma

"With an urban renewal program planned, and no provisions being made for displaced Negro families who must move elsewhere, the housing picture in Tacoma is an increasingly dark one. Only through enlightened community action and the expenditure of public funds, plus ordinances which are enforceable, can a dent be made in this problem, according to our observers in that community * * *"

At the Commission's National Conference of State Advisory Committees, former Governor Charles A. Sprague of Oregon presented a synopsis of the findings and conclusions of the six housing roundtables. The following is an excerpt from that presentation:

"One section made a definite recommendation that there be some regional agency or commission in cities and states to study the problem, investigate complaints of discrimination, seek to educate all segments of the public and recommend remedial action. In all, it was felt that interracial communication is essential to reach a solution of this critical problem of housing."

2. Cities and States With Programs for Separate but Equal Housing

There are a number of cities and States where the residential separation of the races is the prevailing public policy. While racial zoning laws have been declared unconstitutional,[63] segregation in all public housing projects and in most renewal projects appears to be the official rule throughout the South. Even without laws, the predominant attitude of the white majority in these States or cities is probably sufficient in itself to preserve if not extend the present pattern of residential segregation. There appears also to be considerable acceptance among southern Negroes of the necessity for, or the desirability of, racial separation in housing at the present time and in the context of present white attitudes.[64]

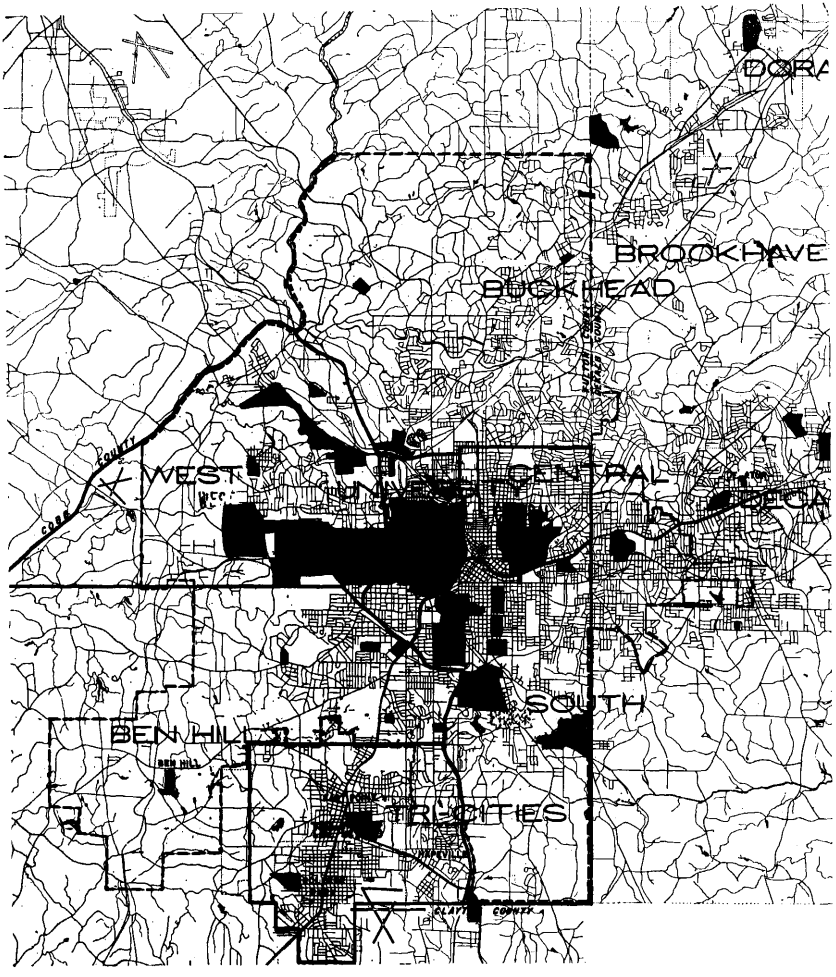
From our studies of the situation in southern cities it appears that racial integration in housing is not now a dominant issue there. However, the question of decent and sufficient housing for Negroes in decent neighborhoods is a pressing and important issue there as elsewhere.

The Commission's hearing in Atlanta gave us some understanding of the problems and the progress possible in southern cities operating on the principle, or with the aim, of separate but equal housing for the white and colored people. There was general agreement among white officials and other community leaders that Negro housing opportunities have not been equal. The mayor of Atlanta is deeply concerned about "the fact that the Negro land area is always restricted * * * cruelly restricted." If something isn't done about it, he said,

[63] See *Buchanan v. Warley*, 245 U.S. 60 (1917); *Harmon v. Tyler*, 273 U.S. 668 (1927); *Shelley v. Kraemer*, 334 U.S. 1 (1948).

[64] Regional Hearings, pp. 527, 556, 562.

CHART XXXII. Racial Housing Pattern in Atlanta



"the white man will wind up in the suburbs and the Negro will wind up in the center of the old city with the old housing, secondhand housing." [65] The city of Atlanta has been trying to do something to reverse this trend.

On the other hand, it has done it within the pattern of segregation which the mayor says "the overwhelming public opinion here in the South" requires. The mayor predicted that if racial integration in housing were insisted upon in the South, public interest in city housing programs would be destroyed.[66] "Chaos and tragedy" would result, according to the chairman of the Atlanta Housing Authority, "if forced integration by law—State or Federal—is applied to all housing that has been assisted by Government agencies. It would seriously damage if not completely destroy the continued good race relations in this community." [67]

Negro witnesses did not quite agree that race relations in Atlanta could be described as "good," and some expressed opposition to segregation in housing.[68] But even the most critical Negro spokesman, the president of the Negro real estate board, agreed that "considering the range of inequities still to be found throughout our Nation" it was correct to say that "the Negro population of Atlanta is housed in more modern, decent, safe, and sanitary housing in proportion to the population than are the Negroes in any city of the United States." [69]

It is not that Atlanta lacks its Negro slums. Mayor Hartsfield showed the Commission one of the worst such slums in the United States. Negroes in Atlanta still have far more than their proportionate share of the city's slums and blight.

But also in Atlanta a corridor has been opened for Negro expansion into the outlying areas and middle- and upper-income Negro suburbs are being established that rank in quality with any suburbs in the country. Mayor Hartsfield drove us through this growing area of beautiful homes, including some in the $50,000 to $100,000 class.[70] Even more significantly, perhaps, a procedure has been devised by which the problems connected with Negro expansion can be handled through biracial negotiation.

In 1952, the Mayor established the biracial West Side Mutual Development Committee. Its purpose was to plan an orderly development of the city's West Side, to bring about better public understanding of the problems of Negro expansion, to stabilize some of the white neighborhoods adjacent to Negro areas, and in other neighborhoods

[65] *Id.* at 443, 447.
[66] *Id.* at 445–446.
[67] *Id.* at 490–491. See also 494, 496, 498, 502, 520, 538.
[68] *Id.* at 547, 556, 562.
[69] *Id.* at 541, 555. See also 455.
[70] *Id.* at 444.

to promote a peaceable transition from white to Negro occupancy that would permit a Negro corridor to undeveloped suburban land

There had been tension and violence on the West side in the face of the inevitable Negro pressure to move out of the congested blighted area in the center of the city.[71] The Negroes were blockbusting into white neighborhoods, and the only answer of the white residents was "Don't move here." It occurred to Mayor Hartsfield that "we would have to get some sort of committee on both sides working together." [72]

The three Negro and three white members of this West Side Committee first had to come to know and trust each other and to collect the facts about the housing situation. The Metropolitan Planning Commission, established in 1947 by the General Assembly of Georgia, gathered and analyzed the facts. The biracial West Side Committee then began to get the parties involved in a particular neighborhood to a meeting, to discuss the facts and seek an understanding about developments.

This approach appears to have been relatively successful, Mayor Hartsfield testified:

> Finally they began to make voluntary agreements among themselves, and then it was that the white side of that committee found out something that they had never realized, that is, as long as you threaten the Negro citizen or tell him what he has to do, he isn't going to do it.
>
> I have observed that that trait follows no color line. But when they sat down and began to talk about their mutual problems, both sides found that they could concede something, and for the first time a committee sat down that was concerned not with just "Don't move in my section," but also concerned with where they would or could move.
>
> So out of that committee certain agreements were made voluntarily, all on a high basis, nobody's pride was hurt, in which the Negro citizen agreed to stay out of certain sections that were tension areas. The white citizen agreed that the Negro needed more land area. * * * [73]

The mayor told about a white subdivision that was a bottleneck to Negro expansion into the suburbs: "The white people in that area were by white people asked to move and get out and take that cork . . . out of the bottle." [74] The mayor testified further that:

> The Negro side, through contact with their loan people and their real-estate people, made certain agreements which they have lived up to. * * * A whole new section of suburbs was opened up for the Negro citizens to grow, and then the city stepped in and gave a part by putting the paving, sidewalks, water, sewerage, lights. * * * [75]

These voluntary agreements negotiated through the West Side Committee were kept because both white and Negro real estate people

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[71] *Id.* at 442–443, 451, 458.
[72] *Id.* at 443.
[73] *Ibid.*
[74] *Ibid.*
[75] *Id.* at 443–444.

began to respect the committee's finding. While the law could not be used as a sanction for such agreements, the business community supported this voluntary approach. The mayor testified, "before anybody would make a loan, they would find out what the West Side Mutual Development had agreed on." [76]

Other Atlanta witnesses agreed that this procedure had been valuable. A white member of the committee, a West Side businessman, testified that simply by presenting the facts fully and candidly——

> We were able to reach a great many agreements which we feel have been helpful to the West Side of Atlanta and to Atlanta as a whole. We have been able to go into areas where they had actual violence, and by talking to all parties concerned we have eliminated the violence, and we have worked out a solution for that particular neighborhood. We have been able to get into areas where there was no real estate market . . . work out a real estate market by establishing that a portion of the area would be white or would be Negro, and so the people there could sell their homes. * * * [77]

Uncertainty about whether an area is to go all-Negro or remain predominantly white appears to be a major cause of tension and panic in so-called transition areas.[78] If the facts make it clear that Negro expansion into the area is inevitable and the white people jointly decide to accept this fact, then homes can be sold to Negroes without any drop in the market. In the "cork in the bottle" area discussed by Mayor Hartsfield, after the facts were presented by his biracial committee showing that the community would be isolated within the path of Negro expansion, a majority of the white residents voted to move out, after which an orderly, 2-year transition to a completely Negro neighborhood was planned. In contrast to previous transitions from white to Negro occupancy, there were, according to the white spokesman from the West Side Committee, "no violence, no ill will, no hard feelings on either side." [79]

On the other hand, if through negotiation with Negro representatives and study of the facts, the white people in a neighborhood become convinced that Negroes do not intend to move into their area, or if, in return for new land opened to Negroes there is an agreement that they will not move in that direction, then the fear of being uprooted subsides and the white neighborhood is stabilized without panic sales.[80]

The Negro spokesman from the West Side Committee, a prominent insurance executive, agreed that as a result of this approach "we have been able through negotiation to work out more peacefully our

[76] *Id.* at 444, 461.
[77] *Id.* at 451–452.
[78] *Id.* at 481–482.
[79] *Id.* at 452.
[80] *Id.* at 484.

problems than most southern cities."[81] He reported that members of the committee had been "cold and cautious" at the first meetings but that "mutual respect and understanding" had gradually developed.[82] The committee was able, he said:

> To get in around the table people who lived in the community, and in so doing they were able to find out what our problems were for the first time. We found out that in many cases we had speculated incorrectly as to the aims and aspirations of each group, so that we see that there is a decided advantage in being able to sit down and discuss the problems rather than to guess what the other person is thinking.[83]

The white people learned that the Negroes had no desire "just to infringe and encroach into white communities" but that the shortage in housing for Negroes made their expansion imperative.[84] The Negroes came to understand the resentment of white families who did not want to have to leave their homes and the neighborhoods where some had been raised.[85]

No one in Atlanta contended that the work of this biracial committee had in any sense solved all the problems. Indeed, the president of the Negro real estate board testified that the main factor in getting new housing and new land for Negroes was the Negroes' own purchases, which took place despite strong white resistance. "We don't bust a block," he said:

> To get enough land usually, when our land shortage becomes so tight, our demand is so high, 2 or 3 or 4 blocks wouldn't be enough, or 10 blocks, so we have a strategy here of surrounding an entire community and getting it on the inside, and as soon as we pin it in, we take it.[86]

He charged that so far as he knew the West Side Committee had never "initiated any movement on its own to provide additional land or housing on a nondiscriminatory basis." Instead, he said, it came in "to negotiate and conciliate racial housing problems" after the Negroes, through their own purchases, had "leapfrogged" over or "encircled" a white area.[87] Without the Negroes' purchase of 200 acres of land, the "cork in the bottle," blocking West Side expansion, would never have been removed. "The land was the solution," he said. The West Side Committee merely brought about white acceptance of the fact. "We bought the land, and they put the fire out."[88]

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[81] *Id.* at 455, 457.
[82] *Id.* at 454.
[83] *Id.* at 458. See also 525.
[84] *Ibid.*
[85] *Id.* at 451.
[86] *Id.* at 550.
[87] *Id.* 546, 550–551.
[88] *Id.* at 551. See also 558–559.

But this was no mean accomplishment. As Mayor Hartsfield testified:

> * * * [I]n this field of race relations, like fire, sometimes a little fire can be put out and a big one can't. Through close liaison, you put out the little fires. . . .[89]

Whatever the shortcomings of the Atlanta approach, the West Side Mutual Development Committee has done a pioneering job.[90] As the Mayor testified:

> Admittedly we have a long ways to go, but I think the great important thing about this whole question is good will and fairly close liaison. When you have those two things, you are going to have progress. It may be slow in one place, a little faster in another, but always there will be progress, and . . . the important thing is the direction in which we are moving and not always the speed with which we are moving.[91]

Negro witnesses did question, at least in part, the direction the progress in Atlanta is taking.[92] They were troubled by the fact that Atlanta housing is more segregated today than it was 20 years ago.[93] They had difficulty answering when asked whether the gains in quality and quantity of housing available to them outweighed the increased segregation.[94] To the recurring suggestion by white witnesses that the custom of residential segregation was voluntary, the president of the Negro real estate board replied that, on the contrary, the custom was enforced through mob violence and the bombing of the homes of Negroes moving into white neighborhoods.[95] He quoted the former Federal Housing and Home Finance Administrator, Mr. Albert Cole:

> It would be the grossest self-deception for us to think that we have given the Negro his freedom so long as he is not free to acquire one of a free man's most cherished possessions—his own home.[96]

But whatever Negro opinion may be on the subject of integrated housing and however impossible that might now be in the South, there is no question that the policy of racial separation does at important points conflict with the aim of providing equal housing opportunities for Negroes. Mayor Hartsfield noted that there had been cases where the zoning law was used to prevent development of areas for low-income citizens.[97] The chairman of the Citizens' Advisory Committee for Urban Renewal conceded that race has been a

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[89] *Id.* at 444.
[90] *Ibid.*
[91] *Id.* at 442.
[92] *Id.* at 455, 542, 555, 560, 562
[93] *Id.* at 482, 545.
[94] *Id.* at 527, 555–556, 562.
[95] *Id.* at 556–557.
[96] *Id.* at 542.
[97] *Id.* at 444–445.

factor in this attempt to block low-cost housing by upgrading land through zoning.[98]

Efforts to get city approval for Federal Housing Act, section 221, relocation housing sites have been "very frustrating." [99] The Commission was told that FHA had approved approximately 15 sites for nonwhite housing under section 221, but that the city had turned down 12 of them because they could not be "politically cleared" with the board of aldermen.[1] This reservation of unused land for white development creates an artificial land shortage for the excluded group in a city blessed with much open land.[2]

Yet despite these difficulties, the fact remains that there is probably more new land available for Negro housing and more construction of new houses for Negroes in Atlanta than in any other major American city. Of the units added to the Negro housing supply in the last 2 years, half are in outlying residential areas, an unusually high proportion. And of the 14,000 units added to the Negro housing supply since 1950, some 72 percent were added by construction and first occupied by Negroes. A nationally respected city planner testified that he knew "of no other city in America of whatever size, large or small, North or South, East or West, in which a higher percentage . . . had been new construction." [3]

The fact is, as the president of the Atlanta Real Estate Board stated with some pride, that the white suburban ring around Atlanta "has been broken and large areas of land on the West Side have been opened for new Negro housing." [4] No doubt the West Side Mutual Development Committee was successful in negotiating the orderly transition of some areas from white to colored occupancy in large part because this opening of the West Side corridor relieved the pressure for colored expansion into existing white neighborhoods. And it may be that the Negroes' purchase of land in the bottleneck was the crucial factor in opening that corridor. But the fact that the work of the West Side Committee has won for this development the support and approval of the organized white community, and that the expansion and improvement of Negro housing is increasingly viewed "as a matter of pride and profit rather than as a threat," stands as an important and perhaps a unique achievement.[5]

Much remains to be done, particularly in making decent housing available to the low-income groups who do not quite qualify for public housing. This is now the nub of the problem in Atlanta as city officials

[98] *Id.* at 495.
[99] *Id.* at 524.
[1] *Id.* at 455–456, 543, 560.
[2] *Id.* at 523.
[3] *Id.* at 479–480, 522, 535.
[4] *Id.* at 535.
[5] *Id.* at 481, 523.

see it.[6] Atlanta has a long record of concern for the housing of its low-income citizens. It built the first public housing project in the nation.[7] It has an extensive urban renewal program for clearing and redeveloping some of the worst Negro slums. Its officials pleaded that no racial issues be injected into the housing situation to upset the present efforts. Otherwise, it was feared, "the city would be denied a tremendous opportunity to remove vast numbers of persons from slum conditions and create new, healthy, beautiful, peopled communities."[8] The executive director of the Atlanta Housing Authority, who was for many years the regional housing administrator of the Federal Public Housing Administration, testified that if integration were required:

> Housing authorities not only in the Atlanta area but in the entire Southeast would find it impossible to continue with federally aided public housing programs in their communities. Unlike a few of our sister States in the North, States in the Southeast are unable to afford financial assistance at State level, and the great housing need among lower income families in the Southeast could not be met. This effect would spill over into the urban renewal field, and much needed urban renewal would suffer from the inability to relocate persons displaced by the urban renewal program. In view of the fact that the need for public housing for nonwhites is approximately twice as great as that for whites, it appears that the cessation of public housing in Atlanta and in all the Southeast would militate against the best interests of the nonwhite population.[9]

From all this it appears that within the limits of the southern policy of racial separation it is possible for considerable progress to be made toward equal opportunity for decent housing, provided enough outlying land is made available for the construction of new Negro housing, and provided there are programs to supply enough low-cost housing to the large number of low-income Negroes. There are more Public Housing Authorities in the Southeast, including some 180 in Georgia alone, than in any other region of the country. Some 90 city "workable programs" for urban renewal have been approved in Georgia, more than in any other State. These facts suggest the kind of progress that is possible in producing better, although not integrated, housing.[10]

The further fact that in some 16 southern cities (although not in Atlanta) Negroes sit on the governing boards of the housing authorities suggests that the Atlanta achievement may not remain unique.[11] The Negro and white members of the West Side Mutual Development Committee have shown that people can work together toward greater

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[6] *Id.* at 444, 490, 495.
[7] *Id.* at 442.
[8] *Id.* at 496.
[9] *Id.* at 489–90.
[10] *Id.* at 501, 546.
[11] *Id.* at 492.

opportunity for Negroes and toward racial harmony, even while disagreeing about the desirability of integration.

State Advisory Committee Reports

The following excerpts are from State Advisory Committees in States having separate but equal policies in housing. The facts, statistics and opinions are those given by the respective State committees, and have not been verified by the Commission.

GEORGIA

Atlanta

Restrictions against Jews "seem to have been breaking down" in the past 10 years. The Commission's Atlanta hearings shed "especial light on the benefits of good interracial communications and cooperation."

Savannah

"Both segments of population, judging from their leadership, are well satisfied with the existing pattern of housing and share a mutual concern for the elimination of slums."

NORTH CAROLINA

"* * * North Carolina should have a special interest in the matter of making available to all segments of our citizenry, a free, adequate and open housing market, because the ability to purchase or rent housing of one's choice will determine in large measure our ability to make full use of the productive capacity of the population. For instance, it is essential that the Negro engineers, supervisors and personnel of the giant corporations which are being urged to locate new facilities in the proposed Research Triangle can be assured that they will have an equal opportunity to purchase or rent any of the housing facilities which will be made available to other personnel of the industries which plan to locate in the area."

TEXAS

"There is presently no attempt being made in Texas to enforce a law or ordinance specifically providing for segregation and discrimination for housing." Where the number of minority racial groups are "comparatively insignificant . . . the least opposition to the discontinuance of alleged discriminatory practices is found. It is these areas where reform to alleviate whatever wrong is occasioned by such practices would have, and is having, its genesis. From such beginnings there appears to be a definite trend to extend the acceptance of such reforms further and further into other areas.

"As an example of the type of attention that has been given to the problem of good housing, we shall instance a new subdivision for Negroes built in Dallas, known as Hamilton Park. This subdivision, in quality and location, is equal, if not superior, to the average white subdivision in the same price bracket that has been built in recent years. * * *

"It is our opinion that a movement such as this, which implies a revision of inherent social concepts and traditions, to which many of our citizens adhere with strong sentiments and firm convictions, cannot be consummated with summary suddenness. Neither can it be accomplished with enduring effectiveness by legalistic action or judicial decree. It is our sincere belief that such a movement can attain full fruition in a society such as ours only when the people affected are brought to a realization of its righteousness and justice. In most instances, such a transformation must be a matter of gradual and sympathetic readjustment, without the imposition of duress or excessive compulsion.

"Whereas we make no plea for the maintenance of the status quo, nor do we condone either thought or action which is calculated to thwart the fundamental principle of equality under the law, we do recommend that we make haste slowly in the undertaking to bring about the ultimate in the realization of such principle. We firmly believe that substantial progress in such direction already has been made in Texas, and that the trend will continue unless the progress is impeded by undue external pressure or some other cause that may arouse the resentment and stimulate the opposition of our people.

"It is our considered judgment that in the final analysis, this far-reaching problem can be effectively resolved only through the medium of spiritual understanding. We entertain the hope that such an ideal so deeply cherished in due time may become a reality, and that people of all races and creeds may live in our land in an atmosphere of contentment, good will, and mutual respect."

3. Cities and States with No Effective Laws or Policies Relating to Discrimination in Housing

Most cities and States in the United States do not have the far-reaching laws prohibiting discrimination in housing that have been enacted in New York City and Pittsburgh, and in Colorado, Connecticut, Massachusetts, and Oregon. They do not have any official city or State commissions working to provide equal opportunity in housing. Nor do they have a public policy in favor of residential separation of the races. Yet racial discrimination in housing exists in substantial though varying degrees in all of them.

In some of these cities and States, remedial policies and programs are being developed or seriously considered. In others, despite concern by some officials or private citizens, or by religious or civic bodies, little or nothing is being done about the problem at all.

The Commission decided to hold its third housing hearing in a city that presented neither the legislative approach of New York nor the "separate but equal" approach of Atlanta. Chicago not only met this test but is a city that has long had a large Negro population. It was an early target of the great northward migration of the Negro.

The State of Illinois has enacted no legislation outlawing discrimination in housing, except for one minor measure concerning restrictive covenants on urban renewal land assembled by public authority.[12] It also has a State Commission on Human Relations with power to study, educate, and make recommendations but with no specific authority in the field of housing.[13] Despite an old civil rights statute prohibiting discrimination in a long list of "public accommodations,"

[12] Ill. Stat. Ann. ch. 67½, sec. 82 (Smith-Hurd). This statute prohibits racially restrictive covenants on land sold by an official Land Clearance Commission under the urban renewal program, but such covenants are unenforceable anyway under Shelley v. Kraemer, 334 U.S. 1 (1948).

[13] Ill. Stat. Ann. ch. 127, sec. 214.1 et seq. (Smith-Hurd).

including cemeteries, the State has not yet seen fit to extend the coverage to publicly constructed or publicly assisted housing.[14]

Nor has the city of Chicago enacted any law covering publicly assisted or multiple-dwelling private housing. Mayor Richard Daley indicated his opposition to such a law for the city alone. He advised the Commission that if there were to be "any law at all . . . you would have to have a law that would take in the entire metropolitan area." [15]

The city council of Chicago has declared that in the selection and admission of tenants to the city's public housing projects "families shall not be segregated or otherwise discriminated against on grounds of race, color, creed, national origin, or ancestry * * * ." [16] And there is a city Commission on Human Relations whose work is discussed below.

But there is no other official action directly relating to this problem, and even in public housing, as reported below, city policies have resulted in a large measure of *de facto* segregation. In fact, all the evidence indicates that in terms of racial residential patterns, Chicago is the most segregated city of more than 500,000 in the country.[17]

Chicago is a classic example of the kind of solid Negro concentration in overcrowded central slum areas that gives rise to the description "ghetto." Seventy-five percent of the Negroes live in 7 of the city's 75 neighborhood areas.[18] In Chicago the largest area of Negro concentration is called the "Black Belt." It is shown in the darkest section of Chart XXVIII on page 361.

Chicago is also a classic exhibit of "blockbusting." As Chart XXXIII (pages 431–32) shows, almost the only place for Negroes to expand is along the periphery of existing Negro areas, through the purchase of adjacent white homes and the transition of the block or neighborhood from white to Negro.[19]

In view of these facts, it is not surprising that Chicago is a city of strong racial tensions. The frustrations and resentments of Negroes

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[14] Ill. Stat. Ann. ch. 38, sec. 125 (Smith-Hurd). This statute prohibits racially discrimination in "inns, restaurants, eating houses, hotels, soda fountains, soft drink parlors, taverns, roadhouses, barber shops, department stores, clothing stores, hat stores, shoe stores, bathrooms, restrooms, theaters, skating rinks, public golf courses, public golf driving ranges, concerts, cafes, bicycle rinks, elevators, ice cream parlors or rooms, railroads, omnibuses, busses, stages, aeroplanes, streetcars, boats, funeral hearses and public conveyances on land, water or air, and all other places of public accommodations and amusement and in "graves in any cemetery or place for burying the dead."

[15] Regional Hearings, p. 626. Mayor Dilworth of Philadelphia also discussed with Commission representatives the need for a statewide or metropolitan areawide coverage if an antidiscrimination law was not to promote further white migration to the suburbs.

[16] This resolution of January 11, 1950, was reaffirmed by the council on April 7, 1954, In line with this, the Chicago Housing Authority has adopted the following policy statement with respect to the selection of tenants: "Non-Discrimination. There shall be no discrimination as to race, color, creed, or national origin in the selection or placement of tenants in any project owned or operated by the Authority" (Regional Hearings, p. 719).

[17] See *supra*, p. 365. Regional Hearings, p. 850.

[18] Regional Hearings, p. 847.

[19] *Id.* at 847.

confined largely to bad housing in slums or blighted neighborhoods, and of white people caught in the path of Negro expansion who find themselves uprooted by the transition, are always simmering. They erupt frequently in incidents of racial violence and occasionally race riots. Since World War II, three large-scale riots of some duration have occurred in areas where Negroes were moving into white neighborhoods. Between 1956 and 1958 there were 256 reported incidents of racial violence, including 5 deaths and 38 cases of arson. Of these, 176 were attacks by whites on Negroes, 53 were attacks by Negroes on whites. As Chart XXXIV (pages 435–36) shows, most of these incidents took place in areas of racial transition.[20]

Nor in the face of all this is it surprising that middle-income white families are moving out of the city. The flight to the suburbs is a universal phenomenon not necessarily connected with racial problems, but the state of human relations within the city must be a contributing factor here. Every week in Chicago the white population decreases by an estimated 300 persons, while the Negro population increases by nearly 600.[21]

It is perhaps surprising that with these unsolved problems, Chicago continues to grow, largely through the migration of Negroes. Chicago is indeed an "exploding metropolis." From 4,470 inhabitants in 1840, the city's population had passed a million and a half by the turn of the century. The following figures indicate the rate of growth in both the city proper and the whole metropolitan area, including the suburbs:[22]

Year:	*City of Chicago total*	*Chicago standard metropolitan area total*
1900	1, 699, 000	2, 093, 000
1910	2, 185, 000	2, 753, 000
1920	2, 702, 000	3, 522, 000
1930	3, 376, 000	4, 676, 000
1940	3, 397, 000	4, 826, 000
1950	3, 621, 000	5, 495, 000
1957	3, 746, 000	6, 348, 000

The city's demand for labor for its great industrial plants and commercial enterprises has drawn migrants of all races and nationalities to Chicago. That demand continues, according to the president of the Chicago Association of Commerce and Industry who stated in 1957 that the Chicago area would need an additional 400,000 workers "over and above our homegrown manpower" in the next 5 years.[23]

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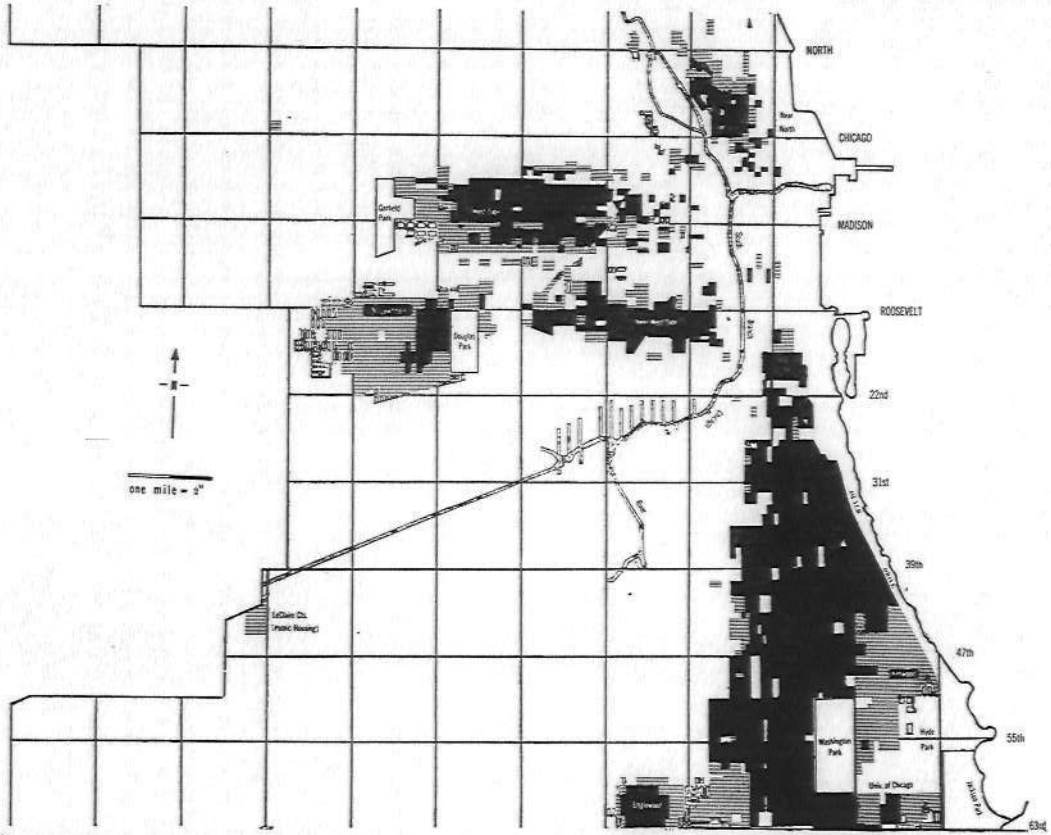
[20] *Id.* at 854–855, see tables 1 and 2.

[21] Regional Hearings, p. 843.

[22] *Id.* at 850.

[23] Joseph L. Block, Keynote Speech, Abridged Proceedings, Citywide Conference, "Solving the Problems of Chicago's Population Growth," Chicago Commission on Human Relations, May 29, 1957, p. 5.

Chart XXXIII



AREAS OF NEGRO RESIDENCE

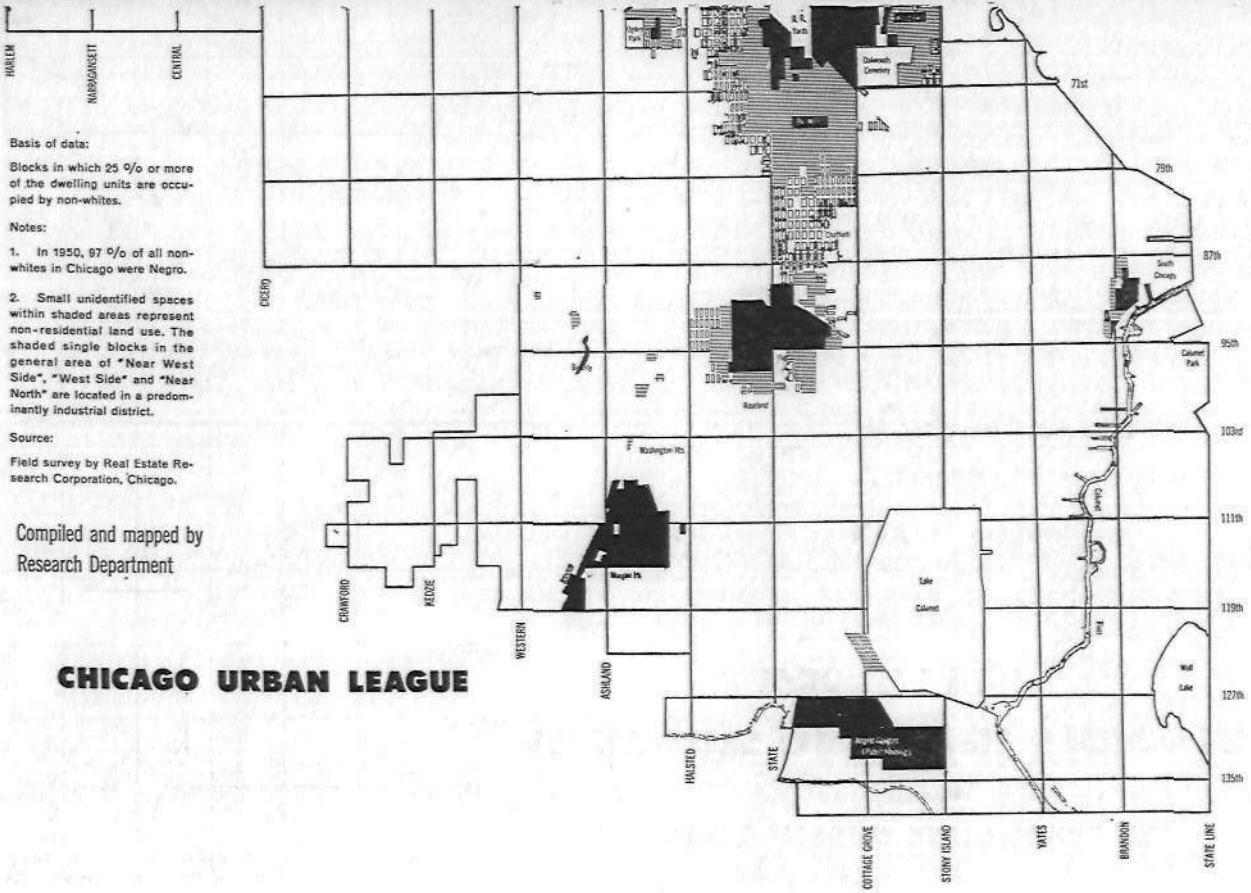
IN CHICAGO

Key

APRIL, 1950

APRIL, 1956

AUGUST, 1958



Basis of data:

Blocks in which 25 % or more of the dwelling units are occupied by non-whites.

Notes:

1. In 1950, 97 % of all non-whites in Chicago were Negro.

2. Small unidentified spaces within shaded areas represent non-residential land use. The shaded single blocks in the general area of "Near West Side", "West Side" and "Near North" are located in a predominantly industrial district.

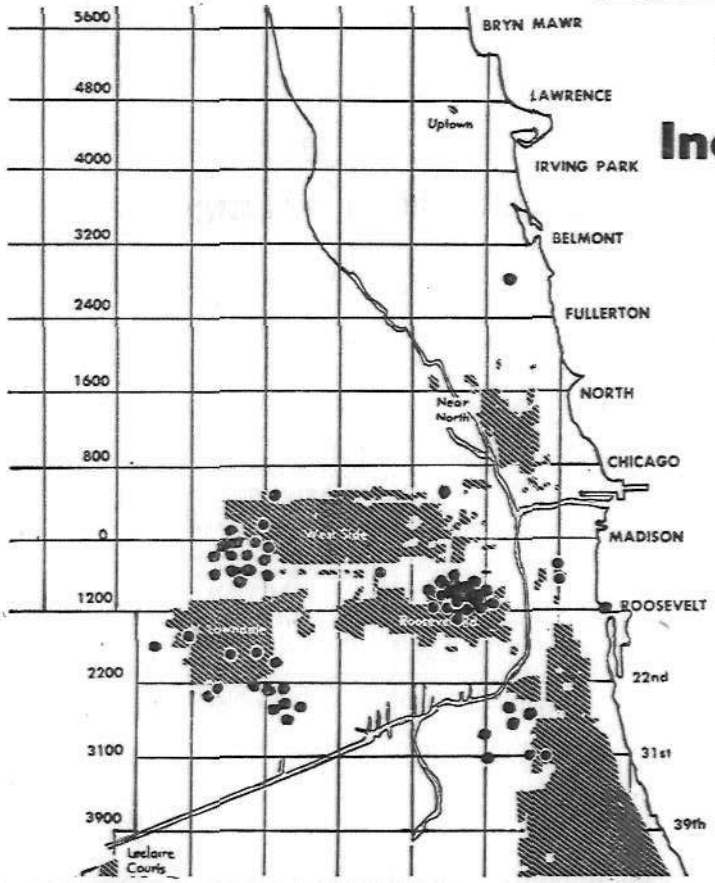
Source:

Field survey by Real Estate Research Corporation, Chicago.

Compiled and mapped by Research Department

CHICAGO URBAN LEAGUE

517016—59—29



CHICAGO'S NEGRO RESIDENTIAL AREA

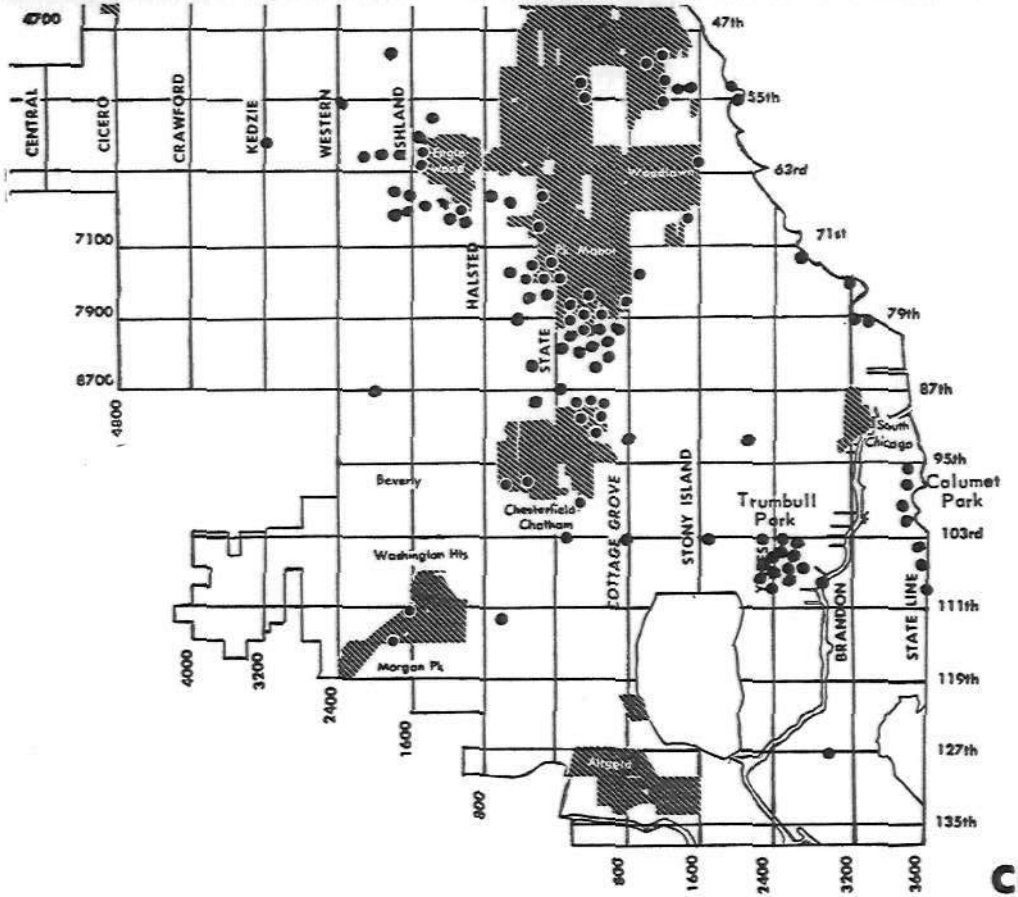
as related to

Incidents of Racial Violence

1956 . . . 1957

KEY

- Each dot represents 1 incident
- Negro residential areas



1956		1957	
January	7	January	6
February	7	February	4
March	9	March	16
April	17	April	7
May	5	May	1
June	5	June	9
July	6	*July**	23
August	6	August	9
September	5	September	4
October	5	October	2
November	6	November	3
December	1	December	1
TOTAL	79	TOTAL	85

*Includes Calumet Park race riot of July 28, 1957

Each incident of "racial violence" is a separate case of exertion of any physical force against a person or persons or property, because of the race of the affected person or persons.

Basic data on residential areas by cooperation of Real Estate Research, Inc. Incidents of violence compiled and mapped by

Research Department

CHICAGO URBAN LEAGUE

Negroes are a major source of this manpower. Although they have been a part of Chicago's population from its beginning, in the last half century their numbers have literally multiplied. Between 1910 and 1920 the Negro population more than doubled, and it doubled again between 1920 and 1930. Following a decrease during the depression of the 1930's the Negro population increased 77 percent during the decade between 1940 and 1950. It is estimated that the nonwhite population (96 percent Negro) swelled from 509,000 in 1950 to 749,000 in 1957, an increase of about 45 percent in 7 years. The nonwhite population went from 14 percent of Chicago's total population in 1950 to 20 percent in 1957.[24]

During these years the Chicago metropolitan area outside the city limits has also experienced a great population expansion, most of it white migration to the suburbs. The white population outside the city has increased from 389,000 in 1900 to 1.4 million in 1940, 1.8 million in 1950, and 2.5 million in 1957, while the outlying nonwhite population has increased only from 5,000 in 1900, 53,000 in 1940, 96,000 in 1950 and 147,000 in 1957. That is, the proportion of whites living outside the city has increased from 19 percent in 1900 to 48 percent in 1957, while the nonwhite proportion has increased only from 14 percent to 17 percent.[25]

The impact of all this on the city's housing supply was sufficient to make a city planner's nightmare. But there were additional factors to complicate the problem. The Commissioner of City Planning, Mr. Ira J. Bach, described for the Commission "the city's overall housing problem":

> The end of World War II found the city in the midst of its most critical housing shortage since the Chicago fire. The Chicago Plan Commission, in a report published in 1946 . . . cited an immediate need for 100,000 additional dwelling units in 1947 or a 10 percent increase in the city's housing stock. The postwar housing shortage was the culmination of three sets of factors; namely, (1) an existing substantial inventory of obsolescent, dilapidated, or otherwise substandard housing; (2) a very sharp curtailment of new residential construction during the economic depression of the 1930's and the labor and material shortage during the war years of the 1940's; (3) a very substantial increase in demand for housing during the 1940's and 1950's, due to an influx of war workers, return of veterans to civil life, increased number of marriages, and so-called baby boom.[26]

The "enormity of the problem," Mayor Daley told the Commission, was shown by the fact that only 16,400 new dwelling units were constructed in Chicago between 1931 and 1940, of which 4,011 were

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[24] *Id.* at 630–631, 834. See Duncan, O. D. and B., *The Negro Population of Chicago: A Study of Residential Succession,* University of Chicago Press, 1957.

[25] Regional Hearings, pp. 874–875.

[26] *Id.* at 672.

public housing units.[27] During the period between 1940 and 1950 the city's population increased by 225,000, but the net addition to the housing inventory during that period amounted only to approximately 45,000 units. As stated by Mr. Bach, the Commissioner of City Planning, this was "a volume of growth sufficient to accommodate only about two-thirds of the population increase, let alone give encouragement to any hope of replacing the then existing inventory of substandard and obsolescent housing." [28]

The Commission on Civil Rights was interested to find out what a northern city with problems of this magnitude was doing to solve them. The answer, essentially, is that Chicago is focusing upon the general problem of urban renewal and redevelopment and, aside from the necessarily limited educational program of the city's Commission on Human Relations, is doing little directly to resolve the racial housing problem.

* * *

Some of the city's gains in improving and increasing its housing, leaving racial aspects aside, are impressive. In 1956, Chicago adopted both a Housing Code and a comprehensive zoning ordinance, and Mayor Daley stated that he has launched a concerted drive by all city departments to make these new standards effective. The city has moved against property owners who are unwilling to bring their properties up to standards by having receivers appointed who apply rents for repairs until the standard is met. Buildings that are hazardous and beyond repair, the city is asking the courts to order vacated. The Chicago Housing Authority has an additional 9,750 public housing units for low-income families underway. The Chicago Land Clearance Commission has a program involving slum clearance in 21 projects containing over 700 acres, including 14 residential projects that will provide sites for an estimated 9,500 dwelling units. And there is a large-scale conservation program at work in a number of communities.[29]

Mayor Daley reported that Chicago's housing program was beginning to bear fruit. Between 1950 and 1957 the city's housing supply had increased by 5.3 percent, as compared with a population increase of 3.4 percent. Substandard housing decreased by 31 percent while standard housing increased by 16.3 percent. Overcrowding decreased by 30 percent; doubling up of families decreased by 32 percent, and home ownership rose by 16.5 percent to the highest rate since 1900.[30] But there were no equivalent statistics on the extent to which Negroes were able to share in these gains.

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[27] *Id.* at 622.
[28] *Id.* at 672.
[29] *Id.* at 622–23.
[30] *Id.* at 623.

The Commission heard firsthand testimony about some of these notable city programs from officials of the Chicago Housing Authority, the Chicago Land Clearance Commission, and the Community Conservation Board. All have direct impact on the city's racial problems.

At the time of the hearing, the Chicago Housing Authority had completed 18,458 low-rent apartments.[31] The startling racial fact involved was that, as of January 1, 1959, 85 percent of the tenants were Negro, about 13 percent white, and about 2 percent Puerto Rican. Eight of the Authority's 31 developments are occupied exclusively by Negroes, 1 is exclusively white. In the remaining 22, tenancy is mixed, but in 18 of them Negroes occupy more than 75 percent of the units.[32]

Negro occupancy has continued to rise over the past 10 years. In 1949 white occupancy was 39 percent, in 1955 it was 30 percent, in 1959 it was 13 percent.[33] In explaining these changes and the very high proportion of Negro occupancy, Executive Director Alvin E. Rose pointed out that it reflected in part the exodus of the white population from old neighborhoods, and in part the greater proportionate need for standard housing by Negroes. The latter, he said, has been increased not only by the migration of Negroes, but also by the city's renewal program that has cut through the heart of the slum areas, many of which are largely Negro-occupied.[34]

Against this as a full explanation stands the fact that, according to the 1957 National Housing Inventory, there were in Chicago 66,000 substandard dwelling units occupied by nonwhites and 100,000 occupied by whites. Moreover, the median income of the Negro in Chicago was almost three-fourths that of the white resident.[35] Based on relative need for low-rent housing in 1950, it was estimated that 60 percent of all units then planned should be allocated to low-income white families. Even making an allowance for the special factors creating special Negro needs for low-rent housing, Chicago's Negroes are receiving a disproportionate share of the low-rent housing available.[36]

Already a very high proportion of the projects are located within Negro areas. In spite of this, the Housing Authority is now planning to locate additional projects in predominantly Negro neighborhoods. This will not only increase the overall percentage of Negro occupancy

[31] *Id.* at 719.
[32] *Id.* at 727.
[33] *Id.* at 720, 727.
[34] *Id.* at 720–721.
[35] *Id.* at 682, 848, 852, 860.
[36] *Id.* at 860.

but will contribute to maintaining the "Black Belt" and reenforcing the historical city pattern of racially segregated residence.[37]

The effect of this site selection policy is discrimination against low-income white families, who could not be expected to flock to projects in all-Negro neighborhoods.[38]

Apparently the Chicago Housing Authority has no intention of trying to break this pattern by selecting more sites in white neighborhoods. In answer to questions suggesting that this be done, Executive Director Rose replied that he "wouldn't do it any differently than we have been doing it." [39] This indicates that public housing in Chicago will increasingly become a program for Negro housing.

From Mr. Rose's testimony, it appears that the Authority takes this position, reluctantly, because of the opposition and delays that might occur if sites were selected in white areas. The city council must approve the sites selected. "If we had a choice, that is one thing," said Mr. Rose. But locating the projects in the Negro slums was "expeditious right now to get the thing done." There were 20,000 families with children living in substandard conditions waiting for public housing, he reported.[40] "Our prime consideration is better housing for these kids," he said. The Authority had to get a project in "where we can get it in the fastest," rather than get into any long-drawn-out controversy about where sites shall be or shall not be.[41]

Not all Negroes appreciate this discrimination in their favor at the price of accentuating the pattern of segregation. Rev. A. Lincoln James of the Greater Bethesda Baptist Church, a member of the Civil Rights Commission's Illinois State Advisory Committee, suggested to Mr. Rose that because of this policy of site selection "the Council of Chicago is guilty of practicing to a certain degree segregated housing." [42]

He said that if the City Council and the Housing Authority really opposed segregated housing, "then certainly there could be some type of machine . . . set in motion . . . to do away with this." [43]

* * *

The Chicago Land Clearance Commission had underway 21 projects containing over 700 acres. Fourteen of these projects are for residential redevelopment and will provide 9,500 dwelling units. In

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[37] *Id.* at 725, 860.

[38] See pp. 361, 365, 336, *supra,* and Washington Hearing, pp. 37–39, for the Commission's discussion of this problem with Federal housing officials.

[39] Regional Hearings, p. 725.

[40] As of the beginning of January 1959, Mr. Rose reported that the Authority had a waiting list totalling 18,809 families, of which 16,819 were nonwhite (*id.* p. 721).

[41] *Id.* at 724–727. In its Washington Hearing, p. 38, the Commission heard about previous unsuccessful attempts by the Chicago Housing Authority to locate projects outside the Negro area. See *infra,* pp. 475, 476.

[42] Regional Hearings, p. 724.

[43] *Id.* at 726.

two adjoining areas cleared by the Commission, new buildings constructed by private developers now accommodate both white and Negro tenants. Known as Lake Meadows and Prairie Shores, they are located on Chicago's near South Side in an area that was part of a segregated Negro slum.[44]

Chicago witnesses agreed that these apartments are a successful example of interracial living. Their location next to the lake and near the downtown business section gives them a special attraction. One way to achieve integrated housing in large urban areas, it would appear, is through well-planned communities with middle-income housing units, with facilities for comfortable, safe and economical living, convenient to areas of both work and play, and with tenant selection policies designed to acquire tenants of similar social and economic standards. This is also a way to counteract the trend of middle-income residents to move to the suburbs.[45]

Similarly, the Community Conservation Board of Chicago was able to point to hopeful departures from the traditional racial pattern. The city has an ambitious neighborhood conservation program supported by Federal urban renewal aid.[46] In the Hyde Park-Kenwood renewal project, which has advanced farthest, about 80 percent of the existing structures are to remain after a considerable amount of rehabilitation.[47] New public housing and middle-income housing will be constructed in the area, along with the relocation of streets and opening of new parks, playgrounds, and school facilities.[48]

Altogether some $40 million of Federal and city funds will go into the project; private investment is estimated to total nearly $100 million.[49]

What makes this project particularly noteworthy is that one of its purposes is to preserve the neighborhood's integrated character. Following World War II, the Hyde Park-Kenwood area experienced an increase in its Negro population. But the white people there, many of them connected with the University of Chicago, elected to stay. They have so far succeeded in making this a transition area where the transition from white to Negro has been checked. Middle-income white residents are living and working successfully together with middle-income Negroes. Through their community organizations

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[44] *Id.* at 704.

[45] These developments are discussed further in the chapter dealing with the role of private enterprise, *infra,* pp. 512–13.

[46] Ten communities have been officially designated as conservation areas in which urban renewal is in some stage of development. In 18 other communities, the Conservation Board is assisting citizens' groups in neighborhood conservation. These 28 neighborhoods cover a total of 60 square miles, or more than one-fourth of the city's land area. (Regional Hearing, 713, 714–15.)

[47] *Id.* at 714.

[48] *Id.* at 696.

[49] *Id.* at 714.

(the Hyde Park-Kenwood Community Conference and the South East Chicago Commission), they have adopted the goal of "a stable interracial community of high standards." [50]

Mayor Daley said hopefully that "a new pattern of interracial relationship is being developed in these areas which make us believe that they form the basis of a broader understanding, leading to better neighborhoods and greater opportunities for all the people." [51]

However, it is too early to judge whether a new pattern is really developing or whether Lake Meadows, Prairie Shores, and Hyde Park-Kenwood are the exceptions that prove the rule. The executive director of the South East Chicago Commission, Mr. Julian Levi, said that "if programs of community stability do not succeed in the Hyde Park-Kenwood area, they will probably not succeed anywhere else at this time." [52] The University of Chicago provides a nucleus of leadership and stability that most other communities in transition lack.

These are but "tiny cracks" in the "walls of the ghetto," said the executive director of the Chicago Urban League, Mr. Edwin Berry. In order to achieve integrated housing for 3,700 families at Lake Meadows and Prairie Shores, some 3,820 families were dislocated, he said, with few of them able to return to live in the higher rent apartments.[53] The same question of what happens to the low-income Negroes being displaced in the Hyde Park-Kenwood project has been raised. "Are Negro relocatee families at liberty to take advantage of vacancies in Chicago's total housing supply?" asked Mr. Berry. "The answer is 'no.' What this does to intensify overcrowding and spread blight in Negro communities is obvious." [54] Mr. Berry also submitted statistics that indicate that Negroes have not shared fairly in the general housing gains in Chicago. In summary:

> During the 1940 to 1950 decade the total population increased 6.6 percent and the number of dwelling units 14.5 percent. However, while the white population actually decreased 0.1 percent, whites occupied *more* dwellings in 1950 than they did in 1940. The nonwhite population increased 80.5 percent while there was an increase of only 72.3 percent in the dwellings that were Negro-occupied. While the nonwhite population increased, the dwelling units occupied by them failed to increase at the same rate. Whites, on the contrary, *decreased* in population but *increased* their number of occupied units. * * * The change from 1950 to 1957 reveals only slight improvement in the picture on overcrowding.[55]

"Chicago is in trouble—serious trouble," Mr. Berry concluded. He predicted "that unless the present picture is drastically altered, segre-

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[50] *Id.* at 877.
[51] *Id.* at 624.
[52] *Id.* at 876–877.
[53] *Id.* at 847.
[54] *Ibid.*
[55] *Id.* at 851.

gation in Chicago will increase rather than decline." The city, he said, "will not find a way out unless and until it begins to face up to the problems of providing adequate shelter, in a free and unrestricted market, for the nonwhite citizens of Chicago." [56]

* * *

The one city agency dealing directly with racial problems in housing is the Chicago Commission on Human Relations established in 1943 as a Mayor's Committee and then by ordinance in 1947 as a permanent body. A race riot had occurred in a nearby city in 1943, and Chicago officials feared similar disorders.[57] Mayor Daley says that the Commission on Human Relations is helping to create "an atmosphere of understanding among our people." [58]

With a 1959 budget of over $225,000 and a staff numbering over 30, the city commission works not only in race relations, but has created a Migration Services Department responsible for developing techniques to ease the adaptation of migrants to the city. Much of this work is done by volunteers and is among white migrants from the South and Southwest.[59]

The Chicago Commission devotes much of its time and effort to assisting community organizations in areas of so-called "racial transition" that "are recognizing the futility of trying to preserve the quality of their neighborhoods simply by excluding minority groups," and are "looking for ways in which to absorb minority group members while maintaining or even improving the quality of their neighborhoods." [60] In helping community groups achieve these goals, the commission provides counseling, programing aid, leadership training, periodic conferences, and information material about the economics of transition. Through these efforts the city commission hopes that it can help communities to reverse the heretofore normal course of neighborhoods as they go from white to Negro.

The acting executive director of the Chicago Commission, Mr. Frederick Pollard, said that the apparent success of the Lake Meadows and Prairie Shores projects showed the "possibility of working backward in achieving integration." He called for—

> reevaluation of the idea that a community must tip when it reaches 20 or 25 percent Negro occupancy. This concept assumes a limited tolerance to Negroes by whites, regardless of the community situation. Perhaps the tipping of communities that we have seen is not so much an expression of limited tolerance to Negroes but of limited tolerance to the forces of community decay which often accompany the arrival of Negroes in an older neighborhood.[61]

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[56] *Id.* at 846, 847.
[57] *Id.* at 691.
[58] *Id.* at 622.
[59] *Id.* at 622, 683, 688–689.
[60] *Id.* at 686.
[61] *Id.* at 682.

Mr. Pollard indicated that "segregated housing is contrary to public policy" and said that the Chicago Commission was doing all that it could do to change the pattern.[62] The commission is attempting to do this without the aid of a law prohibiting discrimination in housing, although Mr. Pollard said it would be helpful to have a law that would crystallize public policy and provide a goal toward which law-abiding citizens could be educated.[63]

Given the complexity of the housing problems that now exist in Chicago, it is doubtful that any educational program such as that of the Chicago Commission on Human Relations, however well-conceived and executed, can by itself check or reverse the evolution of white neighborhoods to areas of transition and then to Negro neighborhoods. Just what could change this situation is not clear. But first there would surely have to be the will to do so.

This Commission heard conflicting testimony on how this might be done. The most novel proposal was made by Mr. Saul Alinsky, executive director of the Industrial Areas Foundation and technical consultant of the Back of the Yards Neighborhood Council of Chicago. He presented a bleak picture. "Efforts are sometimes made to prove statistically that the housing shortage is rapidly evaporating," he said.

> These arguments hold together very well as long as the listener does not go into the sections of the Negro ghetto where thousands of families are compressed into space originally intended for far fewer people. The eye can be deceived, but not when the conditions it sees goes on for blocks and blocks and miles and miles.[64]

The term "integrated" in Chicago, he said, usually describes "the period of time that elapses between the appearance of the first Negro and the community's ultimate and total incorporation into the Negro ghetto." He said that the fears of white residents on the edge of the Negro area that their neighborhoods would be inundated were real and legitimate:

> We can ignore these facts and continue to blow the trumpet for moral reaffirmations, but unless we can develop a program which recognizes the legitimate self-interest of the white communities, we have no right to condemn them morally because they refuse to commit hara-kiri.[65]

The answer would not be found in legislation, Mr. Alinsky contended. Instead, he said, "a means must be found to prevent the swamping of white communities by large numbers of Negroes driven out from the heart of the ghetto by the force of the housing shortage.

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[62] *Id.* at 683.
[63] *Id.* at 690.
[64] *Id.* at 770.
[65] *Id.* at 770, 772.

Simultaneously, a means must be found that will forestall the panicky flight of the white population out of communities where a few Negroes have moved in." [66]

A means to do both, he suggested, should be possible because "people of like background, income, occupation, and way of life have and will continue to prefer to live together. This will hold true regardless of whether we are talking about whites living with whites, Negroes living with Negroes, or whites living with Negroes." If the white people could be assured that this would be true and that they would not be overwhelmed by a tide of Negroes coming out of the slums, they would accept Negroes of their own approximate economic and social level as neighbors. "Given a chance," Mr. Alinsky said, "the white population will not leave. Too many whites have already sold and run, only to sell and run again. They're tired and broke. They are now willing to settle for something less than allwhite neighborhoods." [67]

He told how during a race riot a few years ago he talked with some of the white rioters. He said to them:

> Suppose you knew that 5 percent of the population would be Negro, and you were sure the percentage would stay at that figure. Would you let the Negroes live here peaceably, not segregated, but diffused throughout the neighborhood? [68]

The men stirred and finally the mob's leader spoke:

> Mister . . . if we could have 5 percent or even a little bit more, but we knew for sure, and I mean for sure, that that was all there was going to be—you have no idea how we would jump at it! Buy it? It would be heaven!

But the man knew "that when Negroes start coming into a neighborhood, that means the neighborhood's gone." [69]

With all this in mind, Mr. Alinsky proposes to try to carry into effect in Chicago a system of racial quotas involving a series of communities now in the path of Negro expansion. By such agreed community quota under which a limited number of Negroes—perhaps 7 or 8 percent—or one or two Negro families to a block—would be welcomed into white neighborhoods, the Negro population wishing to live outside all-Negro areas could be diffused throughout the city. Only in this way, Mr. Alinsky argued, could a white Chicago neighborhood "control the population pressures raging without and the fears raging within." [70]

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[66] *Id.* at 772.
[67] *Ibid.*
[68] *Id.* at 773.
[69] *Ibid.*
[70] *Id.* at 775, 778.

Commission members questioned Mr. Alinsky closely on just how such an arrangement could be enforced. His answer was that the quota's effectiveness depends on a community being able to control itself.

> The whole system of intimidation and coercion that typified the 'block-buster's' activities must be broken by united community action. . . . Let's assume that a community is organized along this line. They are agreed on this procedure. A home comes up for sale, and they have already decided that there will be this number of homes offered to Negro families who will be invited in. . . . I am trying to say one home to a block, or two homes to a block. I don't know. . . . Let us assume you have an organization so strong that when people have homes to sell they will turn and offer those homes to the community organization to buy; that then the community organization will have the power of selection and of distribution of those homes.[71]

Mr. Alinsky conceded that "only those communities that now face the choice of accepting some Negroes or vanishing completely" would be ready to adopt such a policy.[72] He also pointed to an important element that seemed to be missing in Chicago: "a Negro community organization which can speak for the Negro population."

> I would like to see a large mass Negro community organization to be able to turn to a white community organization and say to it, "Look, you want one and we want two; you want three and we want four. Now, let's get together and pool our strength and we'll be able to get what we want for all of us."

But he said the "Negroes of the City of Chicago do not have a voice . . . to speak and collectively bargain." [73]

The Executive Director of the Chicago Urban League, Mr. Berry, voiced his strong objection to any quota—which he considered inherently "odious", "discriminatory", and, if sanctioned by an official body, "illegal".[74] Mr. Alinsky testified on this point, saying:

> I find it somewhat ironic that I, a person of the Jewish faith, should stand in public and speak favorably about a system of quotas. In the past the quota has been used as a means of depriving individuals of my faith of opportunities and rights which were properly theirs, but the past is the past. What is an unjust instrument in one case can serve justice in another. . . . For those who are shocked by the idea of opening up of white communities to Negroes on a quota basis aiming towards the diffusion of the Negro population throughout the city scene, I can only ask what solution do they propose? [75]

In response, the witness for the Urban League proposed "education and direction and community action that prevents the people who

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[71] *Id.* at 775, 778, 779.
[72] *Id.* at 774.
[73] *Id.* at 779.
[74] *Id.* at 844. The note on "Racial Discrimination in Housing" in 107 *U. of Penn. L. Rev.* 515 at 540–550 concludes that officially-sanctioned racial quotas would be unconstitutional.
[75] *Id.* at 774.

are in a neighborhood from making a mass exodus and [keeps them] staying in that neighborhood long enough to find out that people are people, no matter what color they are." [76]

In a more detailed analysis, the Executive Director of the South East Chicago Commission, Mr. Julian Levi, gave his conclusions from the experience of stabilizing the Hyde Park-Kenwood area racially without the use of a quota: [77]

1. Deterioration and obsolescence do not result from racial problems, but from age of structure, poor maintenance, inadequacy of city housekeeping services, and the lack of adequate schools, parks, playgrounds, and parking areas.

2. Factors outside the community such as the "white noose" around the central city, and deficiencies in the educational program of the rural South and elsewhere, create much of the problem.

3. General statements of tolerance and good-will are not sufficient substitutes for sound construction programs.

4. The solution of the problems of an open community can be achieved only in terms of community excellence. Integrated housing, to be successful, must provide values and financing comparable to the best found on the market, and the people of the community, backed up by the public authorities, must insist that the housing codes be enforced.

5. Funds must be available to help owners purchase, rehabilitate, and improve their property.

And of all these points, Mr. Levi stressed most the idea of "community excellence" as the necessary solvent of racial problems. The way to insure the success of an integrated school, he argued, "is to make that school a great educational institution." Similarly, "the best way to insure the successful development of integrated housing is to provide values and finances comparable with the best found on the market." [78]

If "community excellence" (with or without a program for planning and regulating the diffusion of Negroes throughout the whole city) is the key to the solution of the racial housing problem, then Mayor Daley is right that the city's urban renewal and redevelopment program will provide a "better definition" of the racial problem "and a better climate for action." However, some kind of action, soon rather than later, appears to be necessary to meet directly the racial problem, whether along the lines of the laws of New York or of the Mutual Development Committee of Atlanta or along new lines pioneered in Chicago.

State Advisory Committee Reports

The Commission's State Advisory Committees in those States having no effective laws or policies relating to discrimination in housing commented on the action and inaction of their respective State and local agencies and citizenry.

[76] *Id.* at 844.
[77] *Id.* at 877–78.
[78] *Id.* at 878.

The facts, statistics, and opinions in the following excerpts are those given by the respective State committees, and have not been verified by the Commission.

ALASKA

"Planning commissions and city and town councils in major population centers have worked to meet expansion problems and have been hampered by Territorial status which provided inadequate home rule provisions in the law."

The Committee recommended: "A study be made to determine what could be done to make long-term financing available to more persons in more areas where costs are higher, so that the people in lower income brackets can upgrade their dwellings. . . .

"A State advisory board reporting to the Governor on matters of human rights. The object of this Committee would be to keep the Governor informed on all matters of civil rights in the State in connection with housing, education, employment, and other areas needing attention."

DELAWARE

"All too often the municipal services in Negro neighborhoods are not as good as the services received by white neighborhoods. One has only to compare the two communities, and in most instances, he will see the streets on which Negroes live are unpaved, and even though paved, are not maintained in good condition. Even water facilities supplied by the municipalities, in many cases, have not been extended to the Negro area."

HAWAII

"Acceptance, without regard to race, color or creed, and based upon individual merit and standing is the general rule in regard to people of many races and is rapidly becoming the rule in regard to all racial groups in Hawaii. And this racial tolerance and harmony is the result of natural causes and is not the result of such artificial means as legislation, judicial decrees, executive actions, propaganda, campaigns or the like. It springs from both the hearts and the minds of the populace and is rooted in mutual respect, understanding and a widespread appreciation of the dignity and goodness of human beings."

INDIANA

"Discrimination in housing is probably the greatest blight, but very little is being done to alleviate the problem, due to indifference as much as any other reason."

Fort Wayne

"There's not a municipal or State agency that has been concerned about these conditions [inadequate housing for non-whites]."

Indianapolis

"There are no known official actions by Federal, State, or local agencies to provide decent, safe, and sanitary housing except through compliance and enforcement of existing housing ordinances and regulations."

South Bend

The city's housing problem can best be seen in the light of the nonwhite population increase. During the period 1950–57 in South Bend, Ind., the total population of the city increased 13 percent while the Negro population increased 46.6 percent.

KENTUCKY

Lexington

The major obstacle to any slum celarance project in Lexington is the relocation problem. "There is not much land available to the ousted Negro to build upon." There are three groups which have control of various facets of slum clearance: the Lexington Planning Commission, the (defunct) Urban Renewal Commission and the Lexington Housing Authority. "Without cooperation and coordination of these agencies substandard slum houses will continue to exist."

Since 1956 Lexington has had a minimum housing code (based on the model housing code of the U.S. Chamber of Commerce.) "The code has not been consistently or even frequently enforced."

"An additional obstacle to the Negro (or anyone else in the lower income group) acquiring new housing in Lexington is a recent zoning ordinance which requires a one-half acre lot for a house if the house is not on the city sewer. This requirement was put in because of the dangerous overburdening of drainage areas with too many septic tanks. . . . Bluegrass land is very expensive, and a one-half acre lot is out of the reach of a great many people."

MARYLAND

The Maryland State Advisory Committee adopted the Schwulst recommendations which can be found on pages 68–71 of the regional hearings.

MISSOURI

St. Louis

This city faces a complicated problem. With 96 percent of the land occupied, the largest city in the State with the largest minority group has no area in which to expand.

NEBRASKA

"It appears that the Federal Government alone has attempted to do something effective in the matter of housing to solve the problems. . . . The single exception to the above statement seems to be the attempt of the State of Nebraska to do something for Mexican nationals brought into the State as agricultural workers. . . . Governor Robert Crosby, of Nebraska, in 1954, was the first to manifest a genuine interest in the problem. He appointed a statewide committee which after study reported that discrimination was most pronounced in the areas of housing and employment: 'Racial minorities face residential segregation in its most rigid form, and is buttressed and supported by restrictive covenants.' "

Lincoln

The mayor has appointed a Committee on Human Relations to make fact-finding surveys.

Omaha

The mayor has appointed a Committee on Human Relations to make fact-finding surveys. An urban renewal project has been temporarily rejected.

NEVADA

". . . The State Planning Commission [has] taken no steps to either integrate or segregate housing."

Las Vegas

"The local government . . . has taken no steps to integrate or segregate housing. A Uniform Housing Code has recently been adopted and an administrative program set up for its enforcement.

"The Department of Planning and the Urban Renewal Division have been working constantly to provide decent, safe, and sanitary housing."

NEW MEXICO

The New Mexico State Legislature enacted enabling legislation a number of years ago, authorizing municipalities to proceed with public housing programs. The only city that has utilized this authority has been Clovis, New Mexico, where a completely integrated well-administered public housing facility exists. (The Negro population there is small.)

Albuquerque

An ordinance prohibiting discrimination in places of public accommodation, resort, and amusement because of race, color, religion, ancestry or national origin was enacted in 1952. There is no other legislation dealing with discrimination.

OHIO

Mayor's "friendly relations boards", race relations groups and other local bodies "seek by moral pressure to ease the shock and resulting consequences of the firmly established residential patterns. . . . Such efforts as yet have produced few changes from the fixed pattern."

Cincinnati

Cincinnati has no more developable land and must, therefore, be able to plan in the areas surrounding the central city. The Director of the Cincinnati Department of Urban Renewal stated to the State Committee "that public agencies, including the Planning Commission and the Urban Renewal Department do not consider it their responsibility to promote integrated living among racial groups, even though the city by resolution prohibits discrimination in any house financed wholly or partly by public funds."

UTAH

"Experience in attempting to obtain passage for a modest bill providing a civil remedy for discrimination in public accommodations in the 1957 and the 1959 Utah Legislature has convinced this Committee that there appears no chance of any effective legislation in civil rights being passed by the Utah legislature within the foreseeable future. Relief, particularly for the Indian, Mexican, and Negro, and especially in the areas of housing and employment, must come from Federal legislation."

VERMONT

Burlington

"A voluntary citizens' effort in and about the city of Burlington, led by the churches, has established a positive, in contrast to a negative, approach to housing discrimination by instituting a register which landlords and others can use who make their properties available to Negroes."

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Wheeling

The city is attacking its housing problem by strengthening its building code, and increasing the activity of its enforcement agency, "causing some old unsound properties to be removed, and others repaired. . . ."

"We recommend that in the event the life of the Committee is extended that a more detailed study in the field of housing be undertaken in order to more accurately determine the real source of the problem. . . .

"1. Developing more resources in terms of staff, clerical help and materials, which could be made available to the State committees.

"2. Developing uniform procedures to be followed by State committees in studying given subjects.

"3. Include as areas of study, employment practices and public accommodations."

CHAPTER IV. FEDERAL LAWS, POLICIES, AND HOUSING PROGRAMS

1. The Constitution, Statutes, and Judicial Decisions

The right of all citizens of the United States to acquire, enjoy, own and dispose of houses and land is protected from discriminatory State action by the Fourteenth Amendment to the Constitution. As the Supreme Court has held without dissent:

> Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential precondition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee.[1]

This "essential precondition" was originally among the rights which Congress specifically sought to protect by statute in the passage of the Civil Rights Act of 1866,[2] which was designed to implement the Thirteenth Amendment. It was reenacted in 1870,[3] subsequent to the adoption of the Fourteenth Amendment. Still part of the United States Code, it provides that—

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.[4]

Although there have been several attempts in Congress to enact antidiscrimination amendments to Federal housing statutes, none has succeeded. Thus the above law remains the sole federal statute specifically relating to racial discrimination in housing. It has been recognized and relied upon by the Supreme Court in decisions declaring unconstitutional residential zoning by municipalities on a racial basis[5] and the enforcement of private racial restrictive covenants by both state[6] and Federal courts.[7] Since these are the only two fields in which the Supreme Court has considered this law, its efficacy in other areas of discrimination in housing remains to be settled.

However, Federal housing programs are governed by the constitutional requirements of equal protection of the laws and due process. The Supreme Court has done more than consistently hold that the Fourteenth Amendment prohibits State (or city) action to enforce

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[1] Shelley v. Kraemer, 334 U.S. 1, 10 (1948).
[2] Act of Apr. 9, 1866, c. 31, sec. 1; 14 Stat. 27.
[3] Sec. 18, Act of May 31, 1870, 16 Stat. 144.
[4] Title 42, U.S.C. sec. 1982.
[5] Buchanan v. Warley, 245 U.S. 60, 79 (1917).
[6] Shelley v. Kraemer, 334 U.S. 1, 10 (1948).
[7] Hurd v. Hodge, 334 U.S. 24, 30 (1948).

racial zoning or racially restrictive private covenants in housing. It has also held that this antidiscrimination rule expresses the public policy of the United States and is applicable to the action of Federal as well as state agencies.[8] The Constitution guarantees due process of law to all Americans in their dealings with all agencies of government, Federal as well as State. In the District of Columbia school case, the Supreme Court unanimously held that racial segregation was "not reasonably related to any proper governmental objective" and thus was an arbitrary discrimination "so unjustifiable as to be violative of due process."[9] It "would be unthinkable," the Court held, "that the same Constitution would impose a lesser duty on the Federal Government" than is imposed on the States by the equal protection clause of the Fourteenth Amendment.[10]

It is noteworthy that the doctrine of "separate but equal," which for some years was approved by the Court in the fields of public transportation and education, has never been adopted by it in cases concerning discrimination in housing. On the other hand, the Court has always made clear that the Fourteenth Amendment "erects no shield against merely private conduct, however discriminatory or wrongful."[11] The cases examined below involve the question of drawing the line between what is prohibited official discrimination and what is "merely private conduct."

In the first such case to reach the Supreme Court, *Buchanan v. Warley*, 245 U.S. 60 (1917), an ordinance enacted by the city of Louisville, Ky., prohibited non-Caucasians from occupying residences in any block upon which a greater number of the houses were occupied by Caucasians. A similar provision prohibited Caucasians from occupying houses in blocks where the greater number of houses were occupied by non-Caucasians. The Kentucky courts held the ordinance valid. The Supreme Court unanimously held that the ordinance was not a legitimate exercise of the police power, since it was in direct violation of the Fourteenth Amendment. Ten years later in *Harmon v. Tyler*, 273 U.S. 668 (1926) the Court unanimously declared invalid a similar ordinance which prohibited any Negro from establishing a home in a white community, or any white person in a Negro community, without the written consent of a majority of the opposite race inhabiting the area. See also *City of Richmond v. Deans*, 281 U.S. 704 (1930). However, despite the consistent decisions of the Supreme Court, municipalities have continued to enact zoning ordinances de-

[8] *Id.* at 34–36 (1948).
[9] Bolling v. Sharpe, 347 U.S. 497 (1954).
[10] *Ibid.*
[11] Shelley v. Kraemer, 334 U.S. 1, 13 (1948).

signed to segregate or control the residential areas of Negro citizens. Thus, as recently as 1951, a racial zoning ordinance enacted by the city of Birmingham, Ala., was held to be unconstitutional in *City of Birmingham v. Monk*, 185 F. 2d 859 (5th Cir.), certiorari denied, 341 U.S. 940 (1951).[12]

The first restrictive covenant case decided by the Supreme Court, *Corrigan v. Buckley*, 271 U.S. 323 (1926), involved a suit to enjoin the violation of a covenant limiting the occupancy of houses in an area in the District of Columbia to Caucasians. The validity of such private agreements was upheld, but the Court did not consider the question of the validity of judicial enforcement of such agreements.

In *Shelley v. Kraemer*, *supra n. 1*, the Court finally faced the question of whether the judicial enforcement of racial restrictive covenants by State courts constituted "State action" prohibited by the Fourteenth Amendment. The Court unanimously decided that such enforcement would be a denial of the equal protection of the laws. In *Hurd v. Hodge*, *supra n. 7*, which arose in the District of Columbia, the Court held that judicial enforcement of racial restrictive covenants by Federal courts would be contrary to the public policy of the United States and a violation of the above section from the Civil Rights Act of 1870.[12a]

Following these decisions there remained the question of whether cocovenanters could nevertheless recover damages against a cocovenanter for breach of a restrictive covenant in selling restricted property to non-Caucasians. In *Barrows v. Jackson*, 346 U.S. 249 (1953), the Supreme Court held that an award of damages in such circumstances would constitute coercion on the part of the State in support of the restrictive covenant, and therefore be a violation of the Fourteenth Amendment.

Except as to racial zoning and restrictive convenants the Supreme Court has not yet spoken authoritatively on the matter of residential segregation and discrimination in the sale or renting of dwelling units in public housing projects or in publicly assisted private housing constructed under Government mortgage insurance on urban renewal programs. Neither the policies and practices of the various Federal

[12] Similar ordinances have been declared invalid by the State courts of Georgia, Maryland, North Carolina, Oklahoma, Texas, and Virginia. See Glover v. Atlanta, 148 Ga. 285 (1918); Jackson v. State, 132 Md. 311 (1918); Clinard v. Winston-Salem, 217 N. Car. 119 (1940); Allen v. Oklahoma City, 175 Okla. 421 (1936); Liberty Annex Corp. v. Dallas, 289 S.W. 1067 (1927); Irvine v. Clifton Forge, 124 Va. 781 (1918).

[12a] In the year preceding these decisions the Truman Committee recommended enactment by the States of laws outlawing restrictive covenants and a renewed court attack on their use. (*To Secure These Rights*, Report of the President's Committee on Civil Rights, 1947, p. 169.) The Committee's report and files reveal that it considered the restrictive covenant the most critical problem in the housing field.

housing agencies nor the State and local legislation and ordinances designed to outlaw discrimination in private or publicly assisted housing have been reviewed by the Court. Only two cases in the area of public housing have reached the Supreme Court and neither resulted in a decision on the merits.[13]

In the lower Federal courts, however, there has been considerable litigation involving segregation and discrimination in public housing projects. In two cases racial segregation in these projects has been upheld by district courts,[14] relying on the "separate but equal" doctrine. However, in a later suit by the plaintiff in one of these cases the Fifth Circuit Court of Appeals (for the States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas) held that if the allegation of racial discrimination could be proven then the plaintiff's rights under the Fifth Amendment would be violated.[15]

The Fifth Circuit applied to the field of housing the Supreme Court's statement in the District of Columbia school case that since the Constitution prohibits the States from maintaining racial segregation "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government." On the other hand it showed its reluctance to move hastily, or at all, in this area by adding:

> Here, we have an extremely important question, undoubtedly affecting a large percentage of the low-cost housing development programs, and ultimately affecting the living standards of a great number of persons, white and colored, who are in urgent need of decent, safe and sanitary dwellings.[16]

In other cases, however, Negroes have already successfully challenged segregated public housing in a number of northern cities.[17] Most significantly, the Court of Appeals of the Sixth Circuit, which includes the States of Michigan, Ohio, Kentucky, and Tennessee, has affirmed a district court decision holding segregation in public

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[13] Housing Authority of the City and County of San Francisco v. Banks, 120 Cal. App. 2d 1, 260 P. 2d 668, *cert. denied* 347 U.S. 974; Cohen v. Public Housing Administration, 257 F. 2d 73 (5th Cir.) *cert. denied*, 79 S. Ct. 315 (1959).

[14] Favors v. Randall, 40 F. Supp. 743 (E.D. Pa. 1941); Heyward v. Public Housing Administration, 214 F. 2d 222, (D.C. Cir. 1954).

[15] Heyward v. Public Housing Administration, 238 F. 2d 689 (5th Cir. 1956). Following a trial on remand the case was again dismissed, 154 F. Supp. 589 (S.D. Ga. 1957), and the dismissal affirmed *sub nom* Queen Cohen v. Public Housing Administration, 257 F. 2d 73 (5th Cir. 1958), *cert. denied*, 79 S. Ct. 315 (1959), on the ground that the plaintiff had not in fact been denied admission to a public housing project on account of her race or color.

[16] 238 F. 2d at 697, 698.

[17] Vann v. Toledo Metropolitan Housing Authority, 113 F. Supp. 210 (N.D. Ohio 1953); Davis v. St. Louis Housing Authority, Civil No. 8637, (E.D. Mo. 1955), 1 RRLR No. 2, p. 353; Jones v. City of Hamtramck, 121 F. Supp. 123 (E.D. Mich. 1954); Askew v. Benton Harbor Housing Commission, Civil No. 2512 (W.D. Mich. 1956), 2 RRLR No. 3, p. 611 *et seq.*

housing unconstitutional.[18] The sixth circuit relied on the Supreme Court's decisions in the racial zoning, the restrictive covenant and the school desegregation cases.

The facts in this sixth circuit case show the way in which the issue of discrimination may arise in public housing projects. As of April 1954, according to the stipulation of both parties, there were more than 20 times as many Negro as white families in the eligible pool of applicants for public housing in Detroit, while the vacancies in projects limited to white occupancy were 17 times as many as those in projects limited to Negro occupancy. In holding such segregation illegal the court of appeals indicated that the implementation of desegregation did not necessarily require immediate integration or a reshuffling of residents in the projects; instead, as in the school cases, the local authorities should proceed with due regard to the variety of obstacles and with all deliberate speed.

Undoubtedly, much of the necessity for litigation aimed at segregated public housing in the North and West has in recent years been obviated by (1) the adoption and implementation by local authorities of nondiscriminatory policies in the selection of tenants for public housing projects and (2) by the passage of State laws and city ordinances prohibiting such discrimination.

Urban renewal programs in some cities have been attacked on the ground that, if consummated, they will result in residential segregation or discriminatory practices in the selection of tenants or purchasers. Thus far only two cases have reached the Federal courts. In one case the complaint alleged a "tacit understanding" between the city of Eufaula, Ala., and private developers that new housing in the area to be developed would be sold or leased only to members of the white race and that the schools and parks planned for the area would also be segregated. The suit was dismissed as premature and based only on speculation that the city officials would ignore "the law that is now so clear" requiring "that there can be no governmentally enforced segregation solely because of race or color." [19]

There is only one decision by a Federal court involving racial discrimination in the sale of houses under the mortgage insurance programs administered by the Federal Housing Authority and the

[18] Detroit Housing Commisison v. Lewis, 226 F. 2d 180 (6th Cir. 1955).

[19] Tate v. City of Eufaula, Alabama, 165 F. Supp. 303, 306 (M.D. Alabama, 1958). In the other case, Negro plaintiffs sought to enjoin the City of Gadsden, Ala., and the Gadsden Housing Authority from undertaking and carrying out two urban renewal projects on the ground that the projects were designed to perpetuate a pattern of segregation. Again, the court found no proof that any unlawful discrimination was indicated in the two plans or that the defendants would enforce segregation in carrying them out. Barnes v. City of Gadsden, Alabama, Civil No. 1091 (N.D. Alabama, 1958), (3 RRLR 712).

Veterans' Administration. In this case, the Court held that while the Federal Government guaranteed loans under conditions requiring approval of architectural and development plans, these did not serve to "make the Government of the United States the builder or developer of the Levittown project." The Court added that, "Neither the FHA nor the VA has been charged by Congress with the duty of preventing discrimination in the sales of housing project properties." [20]

This summary shows that Federal decisional law in the field of discrimination in housing is in a state of flux.[21] Recently, a California Superior Court held that in view of the Federal Housing Administration's degree of involvement in the planning and inspection of private housing projects and the insuring of mortgages, there was sufficient governmental action to give a Negro plaintiff a constitutional right not to be discriminated against in the sale of homes by the real-estate agents and builders. The court approved the plaintiff's argument that "when one dips one's hand into the Federal Treasury, a little democracy necessarily clings to whatever is withdrawn." The defendants did not appeal.[22]

Whether the Supreme Court or any Federal court will go this far in applying the principle of equal protection in the housing field cannot now be known. What the Supreme Court will do about segregation in public housing must also remain uncertain until it finally deals with such cases on their merits. But the clear trend of lower court opinion is that such action by governmental authorities is unconstitutional.

The most difficult legal question is whether the Government's participation in private housing, through public assistance in the clearance and sale of land under urban renewal or the provision of Government loan insurance, thereby extends the protection of the Constitution into this field. As shown on page 462ff. it is in large part governmental aid which makes possible the construction by private developers of large projects that become new communities, if not

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[20] Johnson v. Levitt & Sons, 131 F. Supp. 114, 116 (E.D. Pa. 1955). See also Dorsey v. Stuyvesant Town Corporation, 299 N.Y. 512, 87 N.E. 2d 541 (1949), *cert. denied* 339 U.S. 981 (1950). The Truman Committee recommended that Congress make just such a charge. Mentioning specifically public education, public housing, and public health services, the Committee recommended that Congress make all forms of Federal assistance to public or private agencies for any purpose conditional on the absence of discrimination and segregation based on race, color, creed, or national origin. (*To Secure These Rights,* Report of the President's Committee on Civil Rights, 1947, p. 166.)

[21] See Note, 107 U. of Penn. L.R. 515 (1959).

[22] Ming v. Horgan, No. 97130, Superior Ct., County of Sacramento, Cal. (1958), 3 RRLR 693, 697. *Contra,* see Dorsey v. Stuyvesant, *supra,* n. 20. This decision by the New York Court of Appeals was invalidated by the enactment of city and State legislation prohibiting discrimination in all publicly assisted housing.

towns. The Supreme Court has said that "when authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself." [23]

There is another way of approaching this problem. Aside from the possibility that courts will, as a matter of law, require nondiscrimination by such private builders and developers, should the Federal Government, either by act of Congress or by Executive order, establish nondiscrimination as a condition for the receipt of Federal aid in housing? The President has by Executive order established equal opportunity and equal treatment as a condition of Government contracts.[24] But whether the principle of nondiscrimination should thus by congressional or executive action be extended into the field of housing is a matter of policy not of law.

2. Programs and Policies of Federal Agencies

Housing and Home Finance Agency (HHFA)

In 1947 the Housing and Home Finance Agency was established to provide a single permanent agency responsible for the principal housing programs and functions of the Federal Government. The primary function of the Agency is the general supervision and coordination of its constituents: the Federal Housing Administration, the Public Housing Administration, the Urban Renewal Administration, and the Community Facilities Administration. The Administrator of the HHFA, Mr. Norman Mason, is also the Chairman of the National Voluntary Mortgage Credit Extension Committee and of the Board of Directors of the Federal National Mortgage Association. He also is directly responsible for approving the "workable programs" of communities seeking the assistance of the Urban Renewal Administration.

These programs will be discussed in separate sections. However, it is the HHFA which deals with the Federal housing programs as a whole. It is the responsibility of the HHFA to assess the housing needs of the Nation and to recommend what further should be done

[23] American Communications Ass'n v. Douds, 339 U.S. 382 at 401 (1950). See also, Steele v. Louisville & Nashville RR., 323 U.S. 192, 208–209 (1944).

[24] In Executive Order 10479 of Aug. 13, 1953, establishing the Government Contracts Committee, President Eisenhower declared that "it is the policy of the United States Government to promote equal employment opportunity for all qualified persons employed or seeking employment on Government contracts because such persons are entitled to fair and equitable treatment in all aspects of employment on work paid for from public funds." It reaffirmed existing Executive orders that "require the Government contracting agencies to include in their contracts a provision obligating the Government contractor not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin". See Executive Order 10308 of Dec. 5, 1951 (16 F.R. 12303) in which President Truman established the Committee on Government Contract Compliance and Executive Order 10557 of Sept. 3, 1954.

to meet these needs.[25] While a basic principle of these Federal programs is to support and not supplant private enterprise, the role of the Government, when all these programs are added together, is in many respects decisive.

President Eisenhower stated in his message to Congress on January 25, 1954: "It is . . . properly a concern of this Government to insure that opportunities are provided every American family to acquire a good home." [26] The President said further:

> It must be frankly and honestly acknowledged that many members of minority groups, regardless of their income or economic status, have had the least opportunity of all of our citizens to acquire good homes. Some progress, although far too little, has been made by the Housing Agency in encouraging the production and financing of adequate housing available to members of minority groups. However, *the administrative policies governing the operations of the several housing agencies must be, and they will be, materially strengthened and augmented in order to assure equal opportunity for all of our citizens to acquire, within their means, good and well-located homes.* [Emphasis added.]

The former Administrator of the HHFA, Mr. Albert M. Cole, expressed similar sentiments on several occasions. Two weeks after the above message of the President, Mr. Cole stated, with respect to slum clearance and low-income housing, that "the critical factor in the situation which must be met is the factor of racial exclusion from

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[25] According to sec. 301 of the Housing Act of 1948, it is the duty of the HHFA Administrator to "prepare and submit to the President and to the Congress estimates of national urban and rural nonfarm housing needs and reports with respect to the progress being made toward meeting such needs." 62 Stat. 1268, 1276. In the Housing Act of 1956 Congress "authorized and directed" the HHFA Administrator "to undertake such programs of investigation, analysis, and research as he determines to be necessary and appropriate," including programs to "develop and supply data and information on—

> "(1) the housing inventory of the Nation and the production, use, and demolition and conversion of residential structures and such factors as effect the total supply of housing;
>
> (2) mortgage market problems;
>
> (3) the extent to which adequate housing is available to the low-income and middle-income families of the Nation through public and private means. . . ." Sec. 602, Public Law 1020, 84th Cong., 2d sess.

Members of both the House and the Senate Banking and Currency committees have indicated on various occasions that such estimates are of considerable importance in determining what should be included in housing legislation to meet realistically America's housing needs. But Congress has not appropriated funds for this purpose and no such estimates or reports have been made since 1953.

The lack of full official estimates of the Nation's housing needs, including an official analysis of the special housing needs of minority groups, has hindered this Commission's attempt to appraise Federal housing laws and policies in terms of the equal protection of the laws. See Report No. 41, Senate Banking and Currency Comm., Housing Act of 1959, 86th Cong., 1st sess., p. 60.

[26] 100 *Cong. Rec.* 737–38. Not until after World War II did this concern receive national priority. Federal housing programs were originally proposed as antidepression measures. The stimulation of employment was the first objective of the FHA home mortgage loan insurance as proposed by President Roosevelt in 1934 (78 *Cong. Rec.* 8739–8740). In the Housing Act of 1937 Congress declared that the first objective of the public housing program was "to alleviate present and recurring unemployment." 50 Stat. 888. A "decent home and a suitable living environment for every American family" and "adequate housing for all the people" became national purposes in the 1949 and 1954 acts. 63 Stat. 413; 68 Stat. 590, 637.

the greater and better part of our housing supply." He said that "no program of housing or urban improvement . . . can hope to make more than indifferent progress until we open up adequate opportunities to minority families for decent housing." [27]

These statements were made before the Supreme Court declared unconstitutional the rule of "separate but equal." As it becomes increasingly clear that the law of the land and the public policy of the United States prohibits racial discrimination in official programs of any kind, the Federal housing agencies have serious problems of transition from policies of sanctioning and in some instances actually promoting racial segregation to new nondiscriminatory policies.

Some quiet progress has been made within the housing agencies in giving greater attention to problems of racial equity, in encouraging the housing industry to build more housing for minorities, and in opening new avenues for financing of minority and open occupancy projects. Also the Federal agencies are cooperating with States that have adopted antidiscrimination laws. But Federal mortgage loan insurance still goes unquestioningly to builders of great projects and new development towns who openly plan to, and do, exclude Negroes. Public housing projects in many parts of the country are in fact segregated either by declared city policy, as in Atlanta, or by the process of site location, as in Chicago. Urban renewal projects are in some places accentuating or creating patterns of clear-cut racial separation.

No one can say that the HHFA in recent years has moved very far or very fast in this matter. The former Administrator, Mr. Cole, did hold off-the-record conferences with industry leaders, urging them to help open the housing market to minority families. But he appears to have found this a most discouraging problem. On November 13, 1958, he said, according to the New York Times, that the Federal Government "had no responsibility to promote the ending of racial discrimination in residential accommodations." [28]

The present Administrator of HHFA, Mr. Norman P. Mason, told the Commission that he had "certain more positive or different policies" in this respect than Mr. Cole.[29] In one of his first statements after his appointment in January 1959, Mr. Mason said that "my hope and wish now is that we may be able to move further and faster toward the goal of equal opportunity in housing." His objective, he said, was "to *act*, rather than just to *talk*." [30]

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[27] Address to the Economic Club of Detroit, "What Is the Federal Government's Role in Housing?", Feb. 8, 1954.

[28] *N.Y. Times*, Nov. 14, 1958.

[29] Washington Hearing, p. 33.

[30] Address before National Urban League, New York, Apr. 14, 1959.

To the Commission, Mr. Mason stated his belief that—

> . . . [W]e can and must take needed action in all our programs to assure equal treatment and opportunity in their benefits to all our citizens, irrespective of race, color or creed. I believe it is my responsibility to give leadership and guidance in both policy development and its implementation in this field.[31]

The Federal Government, he said—

> has inherent basic responsibilities in administering its programs equally to its citizens. It also has at hand an inventory of national experience that belongs to the people and must be made available as a significant tool for moving forward in this field. There are many ways to lead—by cooperating, by encouraging, by stimulating. It is sometimes necessary to prod, but whatever the method, it is my view, we must lead.[32]

As a first step forward implementing the responsibility of the Federal Government, Mr. Mason said he was engaged in working out measures designed to overhaul and revitalize the Intergroup Relations Service so as to make it an effective force for achieving equality of treatment in the Government housing programs. Said Mr. Mason:

> I am now engaged in plans to bring together in the Office of the Administrator a leadership nucleus of informed intergroup relations specialists drawn from various racial backgrounds. These must be people knowledgeable with respect to housing programs and the many complex intergroup adjustments involved in this field. The directing head of this group will report directly to me. I expect to look to this staff nucleus for specialized advice and assistance. I will extend their usefulness where needed throughout the Agency. This staff must be of recognized stature and competent with understanding of developments within the Federal agency and outside. I will expect them to recommend, for my consideration, specific programs and steps for continuously increasing the effectiveness of Federal programs in serving this market * * *
>
> In addition to this staff nucleus, it is my conviction that one of our most needed steps is to bring successfully into our efforts sympathetic understanding and the affirmative participation of the entire personnel throughout the housing agencies—for the Agency responsibility on this front can be fully discharged only to the degree that every employee discharges his full measure of the responsibility.[33]

Convinced that a "system of rewards" will do more to solve our housing problems than "police actions", Mr. Mason is devising a plan for gearing all the federal housing programs to rewarding "communities that really want to have all their citizens living in harmony". He believes that the urban renewal "workable program" which does offer rewards is a "potent force" to accomplish this objective.[34]

In each of its three regional housing hearings, the Commission heard various recommendations for the issuance of an Executive order by the President to assure equal opportunity in Federal housing

[31] Washington Hearing, p. 5.
[32] *Id.* at 8.
[33] *Ibid.*
[34] *Id.* at 11, 34.

programs. These proposals ranged from those which would immediately ban all racial segregation or discrimination based on race, color, religion or national origin to those which would end such discrimination gradually. Many of these proposals included provisions for establishing a Presidential committee to either administer or review nondiscriminatory programs or to study and advise the housing agencies as to how best to accomplish equal opportunity.

Some witnesses in Atlanta testified that any immediate Federal requirement of an end to discrimination in Federal housing programs would mean an end to the programs themselves in some areas, and would thus do more harm than good. Mr. Mason also doubted the value of trying to ban all discrimination forthwith through an Executive order. Said Mr. Mason:

> Until we have more fully caught up with the housing needs of America, it seems to me that this might be a dangerous step to take. We don't accomplish the objective we strive for by suddenly causing a depression in the supply of new housing, which might happen as the result of such action if taken precipitously.[35]

However, he thought a Presidential committee on equal opportunity in housing or some "continuing group" to take up where this Commission leaves off was an "excellent suggestion" and "would be helpful." [36]

Federal Housing Administration (FHA)

Since 1934 the Federal Housing Administration has administered the various Federal mortgage loan insurance programs.[37] The following short summary of the most pertinent provisions of the National Housing Act indicates the far-reaching nature of these FHA programs:

Title I

Section 2 authorizes FHA to insure qualified lending institutions against loss on loans made to finance the alteration, repair, improvement, or conversion of existing structures and the building of small new nonresidential structures.

Title II

Section 203 authorizes the insurance of mortgages on new and existing one- to four-family dwellings.

Section 207 authorizes the insurance of mortgages, including construction advances, on rental housing projects of eight or more family units.

Section 213 authorizes the insurance of mortgages on cooperative housing projects of eight or more family units. It also authorizes FHA to furnish technical advice and assistance in the organization of cooperatives and the planning, development, construction and operation of their projects.

Section 220 authorizes FHA insurance on liberal terms to assist in financing and rehabilitation of existing salvable housing and the replacement of slums

[35] *Id.* at 35.
[36] *Id.* at 35–36.
[37] FHA was established by the National Housing Act of 1934, 48 Stat. 1246.

with new housing in areas certified to FHA as eligible by the Housing and Home Finance Administrator.

Section 221 authorizes mortgage insurance on low-cost housing for relocation of families from urban renewal areas and families displaced by Government action.

Section 222 authorizes the insurance of mortgages on dwellings owned and occupied by persons on active duty with the Armed Forces or the Coast Guard.

Section 223 authorizes the insurance under Sections 203, 207, and 213 of mortgages on specified types of permanent housing sold by the Federal or State government.

Title VII

Authorizes the insurance of a minimum amortization charge and a minimum annual return on outstanding investments in rental housing projects for families of moderate income where no mortgage is involved.

Title VIII

Authorizes the insurance of mortgages on housing built on or near military reservations for the use of personnel of the Armed Forces and houses built for sale to civilians employed at military research and development installations.

FHA has written mortgage insurance on more than 5,000,000 homes and on multifamily rental and cooperative housing projects that house more than 800,000 families. Property improvement loans have been approved for more than 22,000,000 home owners.[38]

The impact of the FHA programs on the housing market has obviously been tremendous. They have covered from eight or nine percent to almost 30 percent of the whole mortgage market.[39] Out of a total of 1,343,000 housing units built in multi-family structures during the 11-year period from 1947 through 1957, 709,000 or nearly 53 percent were started with FHA assistance.[40] From 1934 to the end of 1955, FHA insured the mortgages on 29 percent of all new, private nonfarm residential construction.[41] One of the country's largest builders of low and medium priced homes has said that "we are 100 percent dependent on the Government. Whether this is right or wrong it is a fact." [42]

An article in *Fortune* magazine concluded that "the overwhelming fact is that Government guarantee of mortgages, which has cost the taxpayer nothing so far, has done more than anything else to make possible a million or more new houses a year." [43]

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[38] Washington Hearing, p. 3.

[39] *Id.* at 3–4. After World War II, the Veterans' Administration loan guaranty program increased the proportion of the market covered by Federal mortgage insurance.

[40] *Rep. No. 1732 on S. 4035,* Senate Committee on Banking and Currency, June 1958, p. 4.

[41] HHFA, *Housing Statistics,* vol. 8, No. 1 (January 1955); Department of Commerce, *Construction Review,* vol. 2, No. 3 (March 1956).

[42] Testimony of William Levitt before House Committee on Banking and Currency, hearings on Housing Act of 1957, March 1957, p. 566.

[43] "The Insatiable Market for Housing." *Fortune,* February 1954.

FHA's programs have cost the taxpayer nothing because they have been run on a business basis and have made a profit.[44]

Nonwhite home buyers and renters have not, however enjoyed the benefits of FHA mortgage insurance to the same extent as whites. According to testimony given before this Commission, less than 2 percent of the total number of new homes insured by FHA since 1946 have been available to minorities.[45] Most of this housing has been all-Negro developments in the South. In the 25 years of FHA operations it is estimated that only some 200,000 dwelling units for Negroes have been built with FHA assistance.[46] Despite repeated efforts to secure official figures on the degree to which nonwhites have participated in FHA programs, the Commission was unable to secure this essential information in appraising federal housing laws and policies. FHA's spokesman reported that the figures were not available and that, after running into difficulties in attempting to collect them, "We simply abandoned the whole idea." [47]

Although the relatively low participation on nonwhites has in part been due to their lower incomes, FHA bears some responsibility. Of great significance in this respect are FHA's policies with regard to the discriminatory practices toward Negroes of real estate boards, home builders and lending institutions.

For the first 16 years of its life, FHA itself actually encouraged the use of racially restrictive covenants. It not only acquiesced in their use but in fact contributed to perfecting them. The 1938 FHA *Underwriting Manual*, which contained the criteria used in determining eligibility for receipt of FHA benefits, warned against insuring

[44] From 1934 through 1957 FHA acquired through foreclosure or the assignment of mortgage notes 80,013 units of housing, representing about 1.5 percent of the 5.3 million units covered by mortgages or loans insured since the beginning of operations. Losses realized amounted to fourteen one-hundredths of 1 percent. Gross income from fees, insurance premiums and investments during 1957 totaled $147 million. Expenses of administering the agency amounted to $41 million, leaving an excess of gross expenses over operating expenses of $106 million. From the establishment of FHA through 1957, gross income totaled $1.3 billion, while operating expenses amounted to $164 million. Since 1940 operating expenses have been paid in full by allocation from the various insurance funds. In 1954 FHA completely repaid its indebtedness to the U.S. Treasury for funds advanced to pay salaries and expenses during the early years of FHA operations and to establish certain insurance funds. On June 30, 1957, FHA had total capital of $551 million which had been accumulated from earnings. (HHFA 11th Annual Report, 1957, p. 47.)

[45] Regional Hearings, p. 349.

[46] *Id.* at 270. See also, *Equal Opportunity in Housing,* American Friends Service Committee, 1955, where it is stated:

"Of 2,761,172 units which received FHA insurance during the years 1935–50 an estimated 50,000 units were for Negro occupancy. This amounts to 2 percent of the FHA total. Moreover, half of the 50,000 is accounted for by 25,000 units with racially designated priorities during World War II under the defense housing program. * * * Thus, during 1935–50, while the FHA insured 30 percent of all new construction, the nonwhite 10 percent received only 1 percent of the benefits of normal FHA operations. The South has a greater than proportionate share of this small amount of housing. All of the southern units were in strictly segregated Negro projects."

[47] Dr. George W. Snowden, Washington Hearing, p. 36. See also, FHA reply to written question.

property that would be used by "inharmonious racial groups," and declared that for stability of a neighborhood, "properties shall continue to be occupied by the same social and racial classes." The Manual contained a model restrictive covenant which FHA strongly recommended for inclusion in all sales contracts. Furthermore, FHA instructed land valuators that among their considerations should be a determination as to whether "effective restrictive covenants are recorded against the entire tract, since these provide the surest protection against undesirable encroachment and inharmonious use. To be most effective, deed restrictions should be imposed upon all land in the immediate environment of the subject location." [48]

FHA continued this practice of encouraging racially restricted housing developments until 1950, despite mounting pressure from civic organizations, State and local antidiscrimination commissions and other groups to abandon the practice. The only change made by FHA during this period was a softening of the wording in the *Underwriting Manual* in 1947.[49] This change in language amounted to no real change in policy, however. In November 1948 Assistant FHA Commissioner W. J. Lockwood stated that "FHA has never insured a housing project of mixed occupancy," and that he believed "that such projects would probably in a short period of time become all Negro or all white." [50]

As a result of the 1948 decisions of the Supreme Court holding racial covenants unenforceable,[51] FHA decided not only to eliminate the model restrictive covenant and all reference to its use from its *Underwriting Manual*, but also to announce publicly that after February 15, 1950, it would no longer insure mortgages on homes whose deeds were to contain restrictive covenants.[52] It also explicitly

[48] FHA appraisers were instructed to predict "the probability of the location being invaded by * * * incompatible racial and social groups" Sec. 937, FHA *Underwriting Manual,* 1938. The "surest protection" against this was said to be restrictive covenants including "prohibition of the occupancy of properties except for the race for which they are intended." Such covenants were recommended for "all land in the immediate environment of the subject location". Sec. 980, *Underwriting Manual,* 1938. Many housing experts believe that while FHA did not invent the restrictive covenant its official sanction played a large role in the spread of racial restrictions, particularly in newly developed areas. See Oscar Stern, "The End of the Restrictive Covenant," *Appraisal Journal,* October 1948, p. 435; Norman Williams, "Planning Law and Democratic Living," 20 *Law and Contemporary Problems* 342 (Duke University, 1955); Charles Abrams, *Forbidden Neighbors,* 229–230 (1955).

[49] The pertinent portion of this revision reads: "If a mixture of user groups is found to exist it must be determined whether the mixture will render the neighborhood less desirable to present and prospective occupants. Protective covenants are essential to the sound development of proposed residential areas since they regulate the use of the land and provide a basis for the development of harmonious, attractive neighborhoods suitable and desirable to the user groups forming the potential market." Sec. 1320(2), *FHA Underwriting Manual,* 1947.

[50] Nathan Straus, *Two-Thirds of a Nation,* Alfred Knopf, Inc., 1952, p. 221.

[51] Shelley v. Kraemer, 334 U.S. 1, (1948), and Hurd v. Hodge, 234 U.S. 24 (1948).

[52] FHA continues to insure mortgages on property which had restrictive covenants recorded against them prior to February 15, 1950. The FHA regulation requires a

advised its appraisers to "recognize the right to equality of opportunity." [53]

While the unenforcibility of racial restrictive covenants has undoubtedly increased Negro participation in FHA's insurance programs by making available to them additional existing housing, it has done little in the way of new housing or of apartment units in suburban and outlying areas. There the discriminatory practices of the real estate business, home building industry, and financial institutions continue for the most part unabated. FHA insurance remains available to builders with known policies of discrimination. With the help of FHA financing, all-white suburbs have been constructed in recent years around almost every large city. Huge FHA-insured projects that become whole new residential towns have been built with an acknowledged policy of excluding Negroes.[54]

Only in States that have enacted anti-discrimination housing laws does FHA have a policy of refusing to insure loans for discriminatory builders. Such agreements now exist between FHA and the States of New York, New Jersey, Oregon, Washington, and Massachusetts. Similar agreements are now being worked out with the States of Colorado and Connecticut and the city of Pittsburgh.

Under these agreements, FHA will cease to do business with any home builder or developer who has been found by a duly constituted State commission or agency to have violated the State's antidiscrimination housing law and against whom a cease and desist order has been issued.[55]

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certification by the mortgagee that there are no restrictive covenants recorded after February 15, 1950, and that he will not subsequently record any such covenant while insured by FHA. Should it be shown that a mortgagee has fraudulently so certified, he is subject to criminal prosecution, although the loan insurance itself would not be withdrawn. FHA Form No. 2004c.

[53] The December 1949 revision of the FHA *Underwriting Manual* had a new sec. 242 that stated: "Underwriting considerations shall recognize the right to equality of opportunity to receive the benefits of the mortgage insurance system in obtaining adequate housing accommodations irrespective of race, color, creed, or national origin. Underwriting considerations and conclusions are never based on discriminatory attitudes or prejudice * * *" And sec. 303 stated further that "homogeneity or heterogeneity of neighborhoods as to race, creed, color, or nationality is not a consideration in establishing eligibility."

[54] Regional Hearings, p. 349. Washington Hearing, p. 43. One legal writer has suggested that some of the Levittown developments might fall within the category of the "company town" in Marsh v. Alabama, 326 U.S. 501 (1946) so that the developer should be held to be subject to the proscriptions of the Fourteenth Amendment because of the position of societal power he has gained. Note, 107 U. of Penn. L. Rev. 516–517 (1959).

[55] In a letter to the Director of the New York State FHA office, dated April 2, 1957, FHA Commissioner Norman Mason gave the following explanation of the agreement with the New York State Commission Against Discrimination, the first such agreement to be executed:

"FHA will extend cooperation to the New York State Commission Against Discrimination in the following manner:

"When notified by the New York State Commission Against Discrimination of any violation affecting FHA-insured housing, the director should make appropriate check to ascertain that it is in fact an FHA insured loan and if the individual or corporation has

Every FHA-aided builder operating in a State with such an anti-discrimination law is notified that the law exists and that FHA expects him to comply with it. But FHA takes no action on its own initiative if the builder practices discrimination. Even if the builder publicly announces his intention to bar Negroes from his project, FHA does nothing until a "valid finding" of his violation of State law has been made by a State agency.[56] It is likely that by the time a particular case is adjudicated by the State agency the builder will have completed and sold all the homes on a discriminatory basis.

In one case that the Commission has followed closely this appears to be what is happening. The builder of Levittown, New Jersey, planned as a development of some 16,000 homes, was quoted in the press in early 1958, to the effect that no homes would be sold to Negroes. Since this would be a violation of New Jersey law the New Jersey Division Against Discrimination proceeded to take action in the matter. But protracted litigation on procedural and constitutional points had still, as of June 10, 1959, prevented a "valid finding" of the pertinent facts by the State agency. Meanwhile, during this period of apparent violation of State law the builder had secured 4,451 conditional loan commitments from FHA of which 1,265 were already converted into insured loans. Mr. Levitt, as noted above, concedes that the aid of FHA insurance has been essential in his projects.[57]

In explanation of this policy, Mr. Mason pointed out that Mr. Levitt was "merely quoted this way in the paper. We think he probably said this, but it is not established." He added:

> When there is a violation of the law, we can cut a builder off. We then have a legal right to do so. It has been established repeatedly in the courts. This is what we promised the States. But we can't promise to go out just because somebody says something which is unsubstantiated and unproven yet.[58]

Mr. Mason agreed that the case was a difficult one, raising serious questions about the efficacy of FHA's policy. "The point is that the FHA is ready and willing to take any step that it can," he said.[59]

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knowledge of the sticker referring to the Metcalf-Baker law, which has been affixed to the application for mortgage insurance.

"If, at the conclusion of a public hearing by SCAD the allegation of violation of the State law by a builder is sustained, the director, upon being informed by SCAD of the violation, will promptly review the facts as developed. If the director believes that the violation is willful and the accused does not at once take steps suggested by the director, then the director shall suspend processing of any future applications received in which an individual or member of the corporation is involved.

"When SCAD arranges a satisfactory correction of noncompliance violation, it will give FHA the facts of the case. The insuring office shall review the facts and make its decision whether or not to resume the processing of applications to be received from the affected individual or corporation. The decision to resume processing will be made on the basis of the facts available to the FHA insuring office regarding the case in point."

See also Washington Hearing, p. 15; Regional Hearings, pp. 167–168.

[56] Washington Hearing, p. 15.

[57] *Id.* at 43–44. Supplemental statistical information secured from FHA.

[58] *Id.* at 44.

[59] *Ibid.*

In response to a question from the Commission as to whether a covenant could be written into the FHA agreement with the builder to the effect that any violation of the State antidiscrimination law would be ground for immediate FHA action against the builder, such as withdrawal of the FHA commitment or refusal to make any further commitments, Mr. Mason said this was an "interesting" idea, "worth exploring".[60]

At present, nevertheless, the fact is that the effect of FHA's agreements to support State anti-discriminatory laws is limited. Thus even in States with anti-discriminatory laws the Negro's participation in FHA benefits is still largely restricted to existing second hand housing purchased by Negroes. Here, too, the Negro is at a disadvantage, for the old housing available to him often fails to meet FHA standards. In 1950, almost 90 percent of all owner-occupied properties with FHA mortgages were twenty years old or less, but more than half of all mortgaged Negro owner-occupied single unit properties were older than twenty years.[61]

In addition to the age of the property, certain building standards of both FHA and lending institutions impose further limits on Negro participation. An old house may be structurally sound and nevertheless not qualify for mortgage insurance because of certain building practices that existed at the time it was built. For example, Mr. Edward Asmus, President of the Chicago Mortgage Bankers Association and president of a community bank, testified that "a bathroom off the kitchen usually bars FHA from financing" a house.[62] When it is considered that 54 percent of the housing in Chicago was built more than 40 years ago [63] and that that is the principal housing market for Negroes in Chicago, it is evident that FHA's high insurance standards operate to exclude a large proportion of Negro home purchasers from its benefits.

Another factor limiting Negro participation is that FHA has for the most part followed the mortgage policies of private banks. FHA's pride in its record of exceedingly low losses on mortgages has led some of its critics to suggest that if it is to operate as a conventional mortgage banking institution then the Government has no reason for being in the field. The justification of FHA, it is suggested, is the need for public assistance in making mortgage insurance available to home buyers of limited means.[64] From this point of view, a higher rate

[60] *Id.* at 45.

[61] Davis McEntire, Race and Residence, report prepared for Commission on Race and Housing, pp. 45–46. Based on 1950 census, *Residential Financing,* pt. 1, ch. 3, tables 18 and 19.

[62] Regional Hearings, p. 756.

[63] *Id.* at 754.

[64] Regional Hearings, pp. 174–175. See Charles Abrams, *U.S. Housing: A New Program, id.* at 171.

of losses might be indicative not of poor management but of good faith. This policy of FHA like its former policy toward restrictive covenants is in part understandable in view of the fact that its personnel has been recruited largely from the private real estate and banking fields. This raises the further question of whether FHA has undertaken to educate its personnel with regard to the special racial aspects of their work—aspects which they may not have considered in private business.

The Commission was told by the spokesman for FHA that the basic problems facing prospective nonwhite home purchasers and builders were:

1. Restrictions on the acquisition and use of desirable land.
2. Limitations on the availability of housing in an open housing market.
3. Restrictions on the availability of mortgage financing.[65]

The programs and policies initiated by FHA in recent years to meet these restrictions and limitations were related to the Commission by Dr. George W. Snowden, Assistant to the FHA Commissioner.[66]

In 1947 FHA established a Racial Relations Service to serve the minority group segment of the housing market. Currently, one officer is assigned to each of the six FHA zones to assist local insuring officers in encouraging greater availability of housing for minority groups. They assist builders and lenders in the planning, construction and financing of housing available to minority groups. In 1958 the Racial Relations Service was changed to Intergroup Relations Service in order to avoid the connotation of racial separateness. A specialist in Intergroup Relations was assigned to work in those states and localities where non-discrimination housing laws have been enacted. Moreover, in the last four or five years, employment of members of minority groups has increased steadily in FHA, including such positions as appraisers, loan examiners, attorneys, architects and construction examiners.[67]

For the past two years FHA has devoted considerable attention to such problems as (1) FHA's appraisal policies as they relate to race; and, (2) increasing the volume of participation of racial minorities with medium and lower-than-medium incomes through reexamination of its down payment requirements and of its policies regarding secondary earning as a basis for extending mortgage credit. Because the number of nonwhite women in the labor market is proportionately much greater than that of white women, normal credit limitations on secondary earnings have been another restriction on Negro home

[65] Washington Hearing, p. 13.
[66] *Id.* at 11–17.
[67] *Id.* at 13, 16, 53–58.

purchases. FHA reports that most local insuring offices are now accepting all or part of the wife's income in mortgage credit analysis. Because of this new policy FHA says that "thousands of nonwhite families whose incomes were formerly too low became eligible for minimum cost homes." [68]

In 1951, FHA announced that all repossessed FHA insured housing would be administered and sold on a non-segregated basis. To what extent the brokers who manage the properties held for rent actually follow non-discriminatory policies is an open question.[69]

Since 1952, FHA has manifested an increased interest in new housing for Negroes. Its first step was to encourage the building of what it called "minority housing." Annual goals were set for local insuring offices in order to spur them to increase the supply of housing available for minority group families. The total 1954 goal was a little over 20,000 homes. The project was abandoned shortly thereafter.[70]

Beginning in 1954, FHA officials have through speeches, private conferences and programs of reorientation encouraged open occupancy projects. The agency reports that as a result of this new policy the actual number of open occupancy projects has increased steadily and that private industry is increasingly taking the initiative on such projects. By 1957 there were 41 such projects with FHA insured mortgages totalling $53 million.[71]

FHA's spokesman, Dr. Snowden, reported further that—

> The movement of nonwhite families into an increasing volume of good housing continues to be one of the significant trends in large urban centers. Reports from every FHA zone emphasize an increased use of FHA mortgage insurance by minority group buyers. Equal significance is attached to the shift in occupancy patterns in subdivisions constructed initially for majority groups under

[68] *Id.* at 16. See FHA written reply, *id.* at 155 ff. In 1953–54 it was found that 18.6 percent of nonwhite families in New York City had annual incomes of $5,000 or more after deduction of Federal income taxes, but only 8.3 percent had such incomes according to the FHA definition of "effective income" that then excluded about 80 percent of secondary incomes. New York State Temporary Housing Rent Commission, *Incomes and Ability To Pay for Housing of Nonwhite Families in New York State,* 1955, tables I and II.

[69] *Id.* at 14, 42. In a supplemental reply, FHA reported that in the 5 years between May 28, 1954, and May 29, 1959, it had acquired 189 rental housing developments of 16,697 units, and sold 178 developments of 12,416 units; and acquired 16,178 home mortgage properties and sold 9,673. Most of these properties held for rent are operated and managed by brokers on contract with FHA. FHA has no nondiscriminatory clause in the contract with the brokers notifying them that FHA forbids racial discrimination in the management of these properties. *Id.* at 155 ff.

[70] *Id.* at 14. See reply containing specific 1954 goals for respective FHA offices and regions (*id.* at 155 ff.). FHA also listed some of the better known minority housing developments, including some open occupancy projects (*id.* at 155 ff.).

[71] *Id.* at 15. See the list of these 41 projects (*id.* at 155 ff.). See FHA's reply and supplementary materials concerning the "outstanding" results of the "coordinated 'team' approach by FHA and the private homebuilding industry" which are reported to have contributed to the production during the last 2 years of "a larger volume of new housing for occupancy by minority groups than in any previous period." (*Id.* at 155 ff.)

the FHA program. We have noticed varied reactions. In many instances the opening of these units to nonwhite families has not resulted in a general exodus of white families.[72]

FHA has thus gone from a policy requiring segregation, through a period of neutrality, to a policy of promoting minority housing and of encouraging open occupancy projects.

State Advisory Committee Reports

The Commission's State Advisory Committees both praise and critize the policies of the FHA. The facts, statistics, and opinions in the following excerpts are those given by the respective State committees, and have not been verified by the Commission.

ALASKA

"Many areas surrounding major population centers do not qualify for FHA or other Government-insured loans because of the lack of services available that are necessary before these loans can be insured."

GEORGIA

"The committee feels that in the smaller communities and rural areas of Georgia, Negroes cannot obtain FHA and conventional loans as easily as they can in Atlanta. . . . Federal legislation providing for lower down payment requirements in minority housing in certain areas might be helpful with perhaps additional protection for the lender in such circumstances. . . . Perhaps even a method of federally guaranteeing loans to developers who open minority housing land, to help them install streets and utilities, would be a contribution."

ILLINOIS

Chicago

"Open occupancy developments are now officially encouraged by FHA but no attempt is undertaken to withhold credit aids in an attempt to discourage or halt the discriminatory practices of builders and lenders. Thus, the role of the Federal Government remains a major factor in the maintenance of segregated housing patterns in Chicago."

KANSAS

"FHA and VA assistance have made it considerably easier for minority group members to purchase homes.

"Responding to the criticism that FHA devalues property if a minority group member moves into a block, FHA officials say this is not true. They indicate, however, that they must respond to the actual value of property and do by checking recent sale prices of other properties on a given block. If these sale prices indicate that the price level of the block is going down, then they must lower their evaluations also.

"FHA, with a stake in protecting values and with no provisions to require open occupancy in homes whose mortgages it insures . . . adds to the cycle of discrimination despite the contributions which it has made to better housing for everyone."

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[72] *Id.* at 15.

Topeka

". . . FHA has made it easier for minority group members to purchase homes in segregated areas only."

KENTUCKY

Lexington

Most of the FHA and VA loans made in this area were made for homes in St. Martin's Village [a Negro development]. . . . The requirements to qualify for these loans were considerably relaxed for the Negro as compared to the white applicant . . . by giving credit for income from secondary employment . . . and for income earned by the wife." The length of time the applicant must have been employed in his present job, and the type of occupation of the applicant's wife were made more flexible.

MARYLAND

Baltimore

An interview with a realty broker is quoted: "FHA appraisals are lower than VA appraisals in comparable or the same areas. VA appraisals are a little more realistic. An FHA appraised property is automatically approved by the VA, or GI purchase agreement, because the FHA is bound to be lower. Discriminatory practices on the part of individual appraisers have been noted in isolated instances. What is needed is a set of uniform criteria and procedures for appraising property—uniform with respect to a given agency and/or all agencies."

Other interviews evoked the observation that FHA is generally known to respect whatever racial patterns exist in the community.

MINNESOTA

The Committee "believes that Federal housing programs have actually contributed to [the] increases in the intensity of housing discrimination problems. This belief goes beyond references to the pre-1950 discrimination policies of the FHA. To the extent that federally-assisted financing has contributed to the pattern of large scale housing developments, in the metropolitan areas of Minnesota at least, it appears to this Committee to have contributed substantially to intensifying the prevalence of discrimination in new housing."

MISSOURI

In a report to the State Advisory Committee, the Zone Intergroup Relations Adviser of the FHA stated that the St. Louis and Kansas City offices have, since 1953, issued more than $1 million annually in commitments on properties being purchased by minority groups. He explained that since no records are kept, this estimate is based on his contact with real estate brokers and mortgage bankers.

NEBRASKA

"Until the current shortage of mortgage money, FHA and GI loans have been available in the better (non-slum) Negro neighborhoods, in racially mixed and open occupancy areas. . . . Unfortunately, subdividers and builders generally have interested themselves exclusively in developing land for white occupancy. On the other hand, Federal Housing, i.e. FHA and VA, have without discrimination approved loans to Negroes without discrimination, and in general increased [the] supply of housing."

NEVADA

"Very meager attempt ever made to use Federal assistance [FHA and VA] for private housing."

NEW YORK

"Neither FHA nor VA takes any affirmative action to assure non-discrimination in housing receiving their assistance beyond notifying builders of the existence of the State and local laws where applicable. The burden of enforcement remains entirely with the State and municipal governments."

OREGON

"It does not appear that the [Federal Housing] Administration has pursued an aggressive policy in regard to minority housing."

PENNSYLVANIA

Pittsburgh

From 1947 to 1953, 7,000 rental units were built with FHA insurance in the city and the suburbs. Only 130 of these were made available for Negro occupancy.

UTAH

FHA and VA financed housing is "rarely if ever available to the Negro in Utah."

VERMONT

"Housing discrimination extends to FHA-financed properties. A verified instance has been found in which a builder who planned a racially mixed development was warned by the bank which finances his FHA insured developments to abandon the plan if he valued his credit."

WASHINGTON

"To date, we are informed, neither the FHA nor the Veterans Administration have used the powers they possess to withhold loan approvals in cases where non-white prospective buyers of homes are the victims of discrimination."

Public Housing Administration (PHA)

The Public Housing Administration, a constituent agency of the Housing and Home Finance Agency, administers the low-rent public housing program authorized by the United States Housing Act of 1937, as amended.[73] This law authorized Federal financial assistance to local communities "to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of low income * * *."[74] PHA provides assistance to participating local housing authorities in the development, financing, construction, and operation of their low-rent housing.[75]

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[73] PHA is the successor of two agencies: the Federal Public Housing Authority and the United States Housing Authority. The Federal Public Housing Authority was created in 1942, and assumed the duties of the United States Housing Authority, which was established by the United States Housing Act in 1937 to administer the Federal low-rent public housing program authorized by that act (50 Stat. 888, 42 U.S.C. 1401). See Ex. B., Washington Hearing, p. 63.

[74] 50 Stat. 888 (1937).

[75] Washington Hearing, p. 17. See Ex. A., p. 62.

By 1958 almost 2 million people were housed in more than 2,000 federally aided low-rent housing projects in 42 States, the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.[76] The total low-rent public housing program consisted of 534,594 units and represented an outstanding capital investment, by the more than 1,000 local housing authorities participating in the program, of more than $3 billion. Of this amount $105 million, or only 3.4 percent of the total, were direct loans from the Public Housing Administration. The remaining 96.6 percent had been obtained by the local housing authorities through the sale of their notes and bonds to private investors in the conventional financial markets.[77] These notes and bonds are tax exempt. The Housing Act of 1937 guarantees payment of both principal and interest on the funds thus borrowed by local authorities.

The annual contributions contract is the basic agreement between local housing authorities and the Public Housing Administration. It provides for initial PHA loans to finance development costs, and for annual contributions to assist in achieving and maintaining the low-rent character of such projects. It includes terms and conditions under which the local housing authority will develop and operate the project. The primary purpose of annual contributions is to cover the deficit which local authorities incur in making their projects available at rents which low-income families can afford. From the inauguration of the Federal low-rent program through June 30, 1957, the Public Housing Administration had paid out $399 million under such contracts. The payments amounted to a little over $90 million for the fiscal year 1957.[78]

In view of the high proportion of Negroes in the very low-income category it was to be expected that Negroes would comprise a considerable portion of those benefited by this federally aided program. As of March 31, 1959, Negroes occupied 187,055 or 45.5 percent of the public housing units.[79] Thus the policies of PHA and the local housing authorities necessarily have a large impact on the housing problems of Negroes.

For the most part, PHA restricts itself to its express statutory responsibilities. It leaves other matters to the local housing authorities, which operate as autonomous units within the framework of their State and local laws and policies. In the field of racial relations PHA has assumed only limited supervision and established

[76] HHFA, *Eleventh Annual Report,* 1957, p. 179, 186, table IV–2, p. 195. As of Dec. 31, 1957, three States (Iowa, Utah, and Wyoming) were without enabling legislation and three States (Kansas, South Dakota, and Vermont) had no programs (table IV–2, p. 195).

[77] HHFA, *Eleventh Annual Report,* 1957, pp. 186–187.

[78] *Id.* at 202, table IV–12.

[79] Washington Hearing, p. 19, table 2, p. 68.

few standards. It appears to view racial segregation in public housing projects as one of those problems "which by law, custom and location are beyond its jurisdiction." [80]

The occupancy requirements for public housing are mostly set by local authorities, although income limits for admission and continued occupancy are subject to PHA approval. These limits vary according to family size and local economic conditions. Local authorities also select tenants. PHA requires only that each unit be occupied by a family whose net income does not exceed the approved admission income limit, and which is either living under substandard housing conditions or is homeless through no fault of its own. Local authorities may add other requisites such as length of residence in the community and a limitation on family assets.[81]

In addition to these requisites, race is also a determining factor in many projects. In Atlanta, for example, as in practically all southern cities, a strict policy of racial segregation is followed by the local housing authority. In Chicago the Housing Authority will admit to its Trumbull Park Homes, the scene of racial violence for an extended period, only Negro tenants who (1) do not have children of high school age, (2) have both husband and wife in the household, and (3) are employed in the general Southeast-Side industrial area.[82] Although as a matter of stated policy an applicant for any given low-rent project in Chicago need not be of a particular race, the concentration of public housing sites in all-Negro areas results in selection of tenants on a racial basis, i.e., projects in the "Black Belt" seem clearly intended for Negroes, those in predominantly white neighborhoods are mostly for whites.[83]

The basic racial policy of PHA is embodied in its "racial equity formula." From its inception public housing has had a policy directed toward assuring Negroes an equitable share of low-rent housing, but it was not until 1951 that the policy was formally promulgated and included in the Low-Rent Housing Manual as follows:

> Programs for the development of low-rent housing, in order to be eligible for PHA assistance, must reflect equitable provision for eligible families of all races determined on the approximate volume and urgency of their respective needs for such housing.

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[80] HHFA, *Eleventh Annual Report*, 1957, p. 179.

[81] Washington Hearing, pp. 64–65.

[82] Regional Hearings, p. 911.

[83] The American Friends Service Committee of Chicago reports the following number of Negro families living in formerly all-white projects in Chicago. Lawndale Gardens: "Never been over a total of 2 Negro families"; Lathrop Homes: "21 Negro families" (as of April 1959); Bridgeport Homes: "Negro families have never been admitted"; Trumbull Park Homes: 19 families as of April 1959. *Trumbull Park, A Progress Report*, April 1957, American Friends Service Committee (Regional Hearings, pp. 903–912).

While the selection of tenants and the assignment of dwelling units are primarily matters for local determination, urgency of need and the preferences prescribed in the Housing Act of 1949 are the basic statutory standards for the selection of tenants.[84]

On its face, this formula requires "equitable provision for eligible families of all races" and is applicable to all sections and localities of the country. In practice, however, PHA has applied the formula only in localities that operate their low-rent housing on a "separate but equal" basis and only there to protect Negro interests.[85]

In Chicago, where most public housing projects are located in the "Black Belt" resulting in Negroes occupying 85 percent of the public housing, PHA's failure to apply the formula has resulted in a form of discrimination against low-income whites. When questioned about the applicability of the equity formula to Chicago as a means of requiring the selection of sites in areas that would serve low-income white needs too, the Commission was told that "Chicago has a policy of open occupancy and we don't apply the equity formula." But in this case "open occupancy" is becoming a euphemism for "Negro housing." [86]

PHA apparently has no policy for dealing with the problem which exists in Chicago. Site selection is left to the locality and PHA does not refuse to approve low-rent programs that are for the most part concentrated in Negro areas. The spokesman for PHA, Mr. Philip G. Sadler, told the Commission the consequence of Chicago's site selection policy "has been pointed up to the city of Chicago, but for some reason it has not been acceptable to them. I can recall not too long ago that a couple of sites were selected on the North Side

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[84] Low-Rent Housing Manual, Housing and Home Finance Agency, Public Housing Administration, sec. 102.1, Feb. 21, 1951. (*Racial Policy*, Ex. C, Washington Hearing, p. 67. See also *Racial Equity in Communities With Small Minority Populations, id.*)

[85] In a supplemental reply to questions on this point, Mr. Philip Sadler, Director, Intergroup Relations Branch of PHA, stated that the racial equity policy "was designed solely to require that each locality's public housing program make available to *nonwhites* an equitable share of the units and associated facilities in accordance with the proportionate volume and urgency of need as between nonwhites and whites in the locality's public low-rent housing market * * * Localities which adopt an open-occupancy policy for their public housing programs are excepted from the requirements of the PHA racial equity policy in the absence of evidence that *nonwhites* are being denied access to an equitable share of the locality's low-rent public housing program." [Emphasis added.] Washington Hearing, p. 155 ff. Nevertheless, granted that the purpose of this policy no doubt was to protect nonwhites, its terms, like those of the Fourteenth Amendment (also first designed to protect the rights of nonwhites), are general.

[86] *Id.* at 38. In his supplemental reply, Mr. Sadler stated that the racial equity policy is not applied "to force nonwhites or any other group to take advantage of their opportunity to share equitably in the program." In his next sentence, however, he gives the reason why a lack of policy in the matter of site selection does result in *de facto* discrimination against low-income whites as well as against nonwhites who do not choose to live in areas of nonwhite concentration: "It is quite true that the project site locations do influence the decisions of potential applicants, both white and nonwhite, as to whether or not they choose to live in a particular neighborhood or project located in a given area and hence may result in *de facto* segregation despite an official open-occupancy policy." The short answer to this was given by the Supreme Court: the Constitution "nullifies sophisticated as well as simple-minded modes of discrimination." Lane v. Wilson, 307 U.S. 268, 275 (1939).

of Chicago, which were turned down by the city council".[87] Mr. Mason said he agreed that "something should be done in these areas" but "what it is, I don't know." [88]

While PHA has no affirmative policy for solving the site selection policy, it does encourage communities to get away from the institutional approach to public housing by scattering its public housing sites throughout the city. This program may ultimately contribute to a solution of this problem and others. Instead of concentrating many tall buildings in an area which tends to create a community apart, authorities are encouraged to build smaller units which can be integrated into existing communities. In Cedartown, Ga., public housing has been built on scattered vacant sites and Philadelphia is planning to purchase and improve existing housing to fill its low-rent need.[89]

The high proportion of Negro occupancy is, of course, not limited to Chicago. The proportion of Negroes occupying public housing units throughout the country has steadily increased. Between 1948 and 1959 it increased from 35 percent to over 45 percent. For the various regional offices of PHA, Negro occupancy in the years 1953 and 1958 was as follows: [90]

TABLE 22

Regional office	Total units occupied		Units occupied by Negroes			
			Number		Percent of total	
	1953	1958	1953	1958	1953	1958
New York	86,103	99,527	21,582	32,119	25.1	32.3
Washington	18,320	59,637	10,565	31,526	57.7	52.9
Atlanta	75,571	97,261	38,065	49,504	50.4	50.9
Chicago	48,545	64,104	18,795	34,797	38.7	54.3
Fort Worth	30,005	53,942	11,679	25,238	38.9	46.8
San Francisco	23,952	33,093	5,483	11,351	22.9	34.3

Along with the increase in Negro occupancy, there has been a continuing trend toward open-occupancy projects in many areas of the country. As of March 31, 1952, 96 localities or 19.6 percent had open occupancy policies or practices. Six years later 310 localities or 35.3 percent had such policies or practices. Further evidence of this trend is found in the increase in the number of racially integrated projects from 76 in 1952 to 428 in March 1959.[91] These integrated projects

[87] Washington Hearing, p. 38.
[88] *Id.* at 88.
[89] *Id.* at 18–19.
[90] PHA, table 2, U.S. Housing Act program: Dwelling units occupied by Negroes as of Dec. 31, 1953, and Dec. 31, 1958.
[91] Table 3, Washington Hearing, p. 69. See "Open-Occupancy in Public Housing," Ex. F, Washington Hearing, pp. 70–107.

were not confined to the North and West but included Washington, D.C., Baltimore, Wilmington, and St. Louis. Though some local authorities have had to abandon racial discrimination and segregation as a result of court action, there has nevertheless been considerable voluntary adoption and implementation of open occupancy.

PHA maintains an Intergroup Relations Branch which works with local housing authorities. It is primarily concerned with reviewing local programs from the standpoint of racial equity.[92] The Branch is composed of a Director on the staff of the Management Division and six Racial Relations officers, one in each of six of the seven regional offices. Their work with respect to the program of the Public Housing Administration is an advisory one. These officers possess a storehouse of special knowledge, skills and interest in dealing with the many racial problems involved in public housing.

One limitation on the Branch is that it is all Negro. This places the focus of their work solely on so-called Negro problems rather than the broader human problems involved. Further, it tags these positions as only "Negro jobs."

State Advisory Committee Reports

The Commission's State Advisory Committees describe the amount of public housing available and the local policies which determine the allocation of the units. The facts, statistics, and opinions in the following excerpts are those given by the respective State committees, and have not been verified by the Commission.

CALIFORNIA

Los Angeles

"The city of Los Angeles has 8,600 public housing units and in checking three projects it was noted that they each have an average of five applicants per day for rentals. The average family in these units has from two to three children which means that the possibility of securing other rentals is very difficult. The present occupants in public housing average 65 percent Negro and 18 percent Mexican-Americans and the rental starts at $40 per month."

DELAWARE

Wilmington

"* * * [T]he housing projects are integrated and there have been few if any serious racial incidents. This is the only area where there is public housing in Delaware."

GEORGIA

Savannah

"* * * [T]he housing authority building low-cost rental units seeks to provide two Negro to one white unit in its low-cost housing and now has 2,170 occupied units. There is some imbalance in the 2-1 formula now because two war housing propects were taken over by the authority and are considered white housing."

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[92] Washington Hearing, p. 19.

HAWAII

"Hawaii, due to its very fortunate history, heritage, location and population, has always been free of discrimination, based on race, creed, color, or national origin, in the selection and placement of tenants in public housing * * * At no time has there been any qualification for tenancy based upon race, creed, color or the like. This has been true both in principle and in practice. Nor has any project or portion of a project been set aside or limited to persons of a particular race, creed or ancestry."

ILLINOIS

Chicago

"* * * [P]ublic housing programs have tended to become segregated as a result of the site selection process. No public housing project has been built in a white or racially mixed area since 1954. * * * The policy of selecting sites for low-rent housing tends to equate such housing with Negro housing."

INDIANA

Fort Wayne

"Fort Wayne has three public housing developments. They are Miami Village, Edsall Homes, and Westfield Village. Nonwhites are not allowed to live in Miami Village and Edsall Homes. Of the 275 or 280 units in Westfield Village, about 60 units are available to Negro families on a segregated basis. As can be seen, the entire public housing program, administered by the Fort Wayne Housing Authority, is segregated and discriminates against Negroes."

Indianapolis

"The Public Housing Administration owns and administers one low income project in Indianapolis, operated directly by the Federal Government. It houses 748 low-income families and while there are no racial requirements, occupancy, due to location and need, has been almost 100 percent Negro since its inception. Families of interracial marriages and all white families have been admitted and would be admitted if applying and qualified. The Indianapolis Housing Authority is inactive and plans no local housing at present."

KENTUCKY

Lexington

"There are currently 1,200 apartments in the public housing projects. These 1,200 apartments are allocated evenly between the races, i.e., 600 apartments for colored and 600 apartments for whites. There is complete segregation in the project. All standards governing admissions to the project are the same for Negroes as for White. * * * The assistant project director, stated that the maintenance, trouble calls and complaints are the same in each area. * * * No Negroes have ever applied for the white project."

MASSACHUSETTS

Boston

The Boston Housing Authority operates 13,837 dwelling units, 356 of which are vacant, and 1,694 of which are Negro-occupied, i.e., 12.6 percent. "This is in keeping with the 1950 census pertaining to the overall housing need, which reports that 15 percent of these were occupied by nonwhites, which amounted to 5 percent of Boston's population. The estimated percent for equity, based on the census, is 12."

Pittsfield

The city has one 99-unit Federal housing project, there are no Negroes residing therein.

NEVADA

Las Vegas

"The city of Las Vegas Housing Authority has maintained the policy of segregation in some of the authority's projects. This is done as they feel that integration of all their projects would be dangerous to the program as a whole."

NEW JERSEY

New Jersey ranks seventh in the country in federally aided programs. "More than $260 million were pumped into the State for housing.

"There are 82 public housing projects in the State consisting of 22,816 units; 7,804 or one-third are Negro-occupied; 46 of these projects are totally integrated; 4 have no pattern at all; 17 are all-white occupied; and 15 have some Negro occupants. Eleven projects housing 2,743 families are now under construction.

"The Commission believes that over a long period of time the cost of locating public housing units so that segregation is avoided will be less costly than the continuing practices of locating all public housing so that they may become restricted areas for people of low economic status. * * *"

NEW YORK

"In public housing, which has been covered by the State law for a longer period than any other type, there is now integration in virtually every community throughout the State." The effectiveness of this policy is in contrast to another "Middle Atlantic State where no law exists, and where more than half of all communities with federally subsidized public housing maintain complete segregation [which] in turn, points to the failure of the Federal Government to provide guarantees of equal accommodations for all its citizens in projects constructed with its funds."

OHIO

"The Public Housing Administration has been able to provide additional housing for Negroes but the other programs seem to have aided very little."

Cincinnati

Public housing is 60 percent occupied by Negroes, mostly on a segregated basis.

PENNSYLVANIA

"There are 53 communities in the State which have low rent housing projects built with Federal subsidies. In the majority of these communities 27 of the 53 show complete segregation by race. One of the larger cities (Erie) operated a segregated program until a few months ago when civic protests forced its abandonment. Two forms of segregation usually operate in the federally aided low rent housing developments. Eighteen (18) of the twenty-seven (27) localities do not have both Negroes and whites as tenants in the same projects, but maintain segregation by sections within projects * * * the so-called checkerboard system. One locality combines the two forms of segregation having two all-white projects and a third segregated by sections. Eight communities in the State have only whites in the federally assisted low-rent projects. In some cases the reason may be that the community has few Negroes in its population

yet 1 medium size city with 490 units of Federal housing, all occupied by whites, had 716 Negroes in 1950; 3 communities, none of them all-Negro have only Negroes in Federal projects."

TEXAS

"The Federal housing projects for minority groups are segregated."

Dallas

"In a large Federal housing project * * * in the so-called West Dallas area, there are 3,500 units. These, of course, were built for, and limited to, occupancy by low-income groups. Of these 3,500, 1,500 are occupied by white, 1,500 by Negroes, and 500 by Americans of Mexican descent, all being part of a single project."

WASHINGTON

Kennewick

"It is lamentable that the Kennewick Housing Authority has never provided rooms for a Negro family, even though the project it administers was built with Federal funds. This exclusion is accomplished by the requirement that an individual be a resident of Kennewick for 3 months before public housing is available. Inasmuch as no Negroes have been permitted to live in the community, this ruling—evidently passed with Negroes in mind—has the effect of banning nonwhites from such housing."

WEST VIRGINIA

Charleston

The Housing Authority operates 834 nonsegregated units, 217 of which are Negro-occupied. The maximum rent is $60 and the minimum $25 (including utilities). The average rent in February 1959 was $38 per month.

Urban Renewal Administration (URA)

Urban renewal, HHFA Administrator Mason told the Commission, "offers real potential for moving ahead" toward equal opportunity in housing.[93]

The Urban Renewal Administration (URA) was established in 1954 as a constituent of the Housing and Home Finance Agency to administer the slum clearance and urban redevelopment programs authorized by the Housing Acts of 1949 and 1954.

Under these programs funds are advanced to localities to help pay the cost of planning slum clearance and redevelopment projects. Loans and grants are made to localities for the actual clearing and redeveloping of slums, or for preventing slums through rehabilitation and improvement of blighted areas. URA also helps finance studies and experiments on how to prevent and eliminate slums or urban blight, and it provides a service to advise localities that are preparing or developing such programs.

The HHFA Administrator is authorized to make capital grant contracts with localities up to $1.35 billion.[94] Under these contracts

[93] *Id.* at 8.

[94] Congress has authorized $1.25 billion and provided that an additional $100 million could be authorized by the President if he, after consultation with the Council of Economic

URA pays two-thirds of the cost of purchasing and clearing redevelopment sites approved by local urban renewal authorities. In addition, when a capital grant is involved, it makes payments for relocation to individuals, families, and business concerns displaced.

Before URA will enter into any contractual arrangement with a locality, the locality must submit a workable program to be certified by the HHFA Administrator. Congress has declared that the workable program "shall include an official plan of action * * * for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community and well organized residential neighborhood of decent homes and suitable living environment for adequate family life." [95]

As of June 10, 1959, it was reported to the Commission that 877 localities have adopted workable programs and 645 projects are being carried out in 386 localities.[96]

A workable program must provide for—

1. Adequate minimum standards of health, sanitation, and safety through a comprehensive system of codes and ordinances that state the minimum conditions under which dwellings may be lawfully occupied.
2. The formulation and official recognition of a comprehensive general plan for the community as a whole.
3. Neighborhood analyses to identify the extent, intensity, and cause of blight, and to determine the needs of the area's residents.
4. The establishment of administrative responsibility and capacity.
5. Provision for meeting the financial obligations involved.
6. Provisions for the relocation of displaced families in decent homes.
7. Provision for communitywide participation to obtain the understanding and support necessary for success.

HHFA Administrator Mason believes that the concept of the workable program "has highly significant untapped possibilities in serving this field" of improving housing opportunities for nonwhites. He indicated to the Commission that he intended to carry out his duty of certifying a community's workable program and approving a renewal of such certification each year in such a way as to tap some of these possibilities.[97]

Advisers, decided it was in the public interest. The President made such a determination. As of Mar. 31, 1959, the HHFA Administrator had made capital grant reservations of over $1.32 billion of the total available $1.35 billion.

[95] Sec. 101(c), title I, Housing Act of 1954. 42 USCA 1451(c).

[96] Washington Hearing, p. 4.

[97] *Id.* at 9.

From the fact that in practically every community Negro and other minority group families are concentrated in the areas most in need of renewal, racial problems necessarily arise in several, if not all, of the above items in a workable program.[98] Administrator Mason indicated that to secure his approval there must be "planning for all citizens * * * benefiting all citizens." He said that "the breadth of such planning can be a real power in loosening and expanding housing opportunities for minorities." Similarly, he stressed that in the required neighborhood analyses, an essential part of sound overall planning, attention must be paid to the living conditions of those on "both sides of the railroad track." Insistance upon code enforcement he sees as a necessary part of insuring that slum clearance does not lead to deterioration of good neighborhoods.[99]

The two items of the workable program that have the most direct impact on racial relations are the requirements of communitywide participation and of provision for relocation of displaced families.

In regard to the first of these, HHFA encourages communities to place special emphasis upon minority group participation in the formulation and adoption of their workable programs. Such participation was described to the Commission by Mr. Mason as the ingredient of a workable program "on which the effectiveness of all others depend." Said Mr. Mason:

> No locality can revitalize itself without the full participation of all its citizens. This is especially true for minorities throughout the community and for the people being displaced. It is absolutely essential to undertake all these actions with the people.[1]

Communities have varied in their response to URA's policy of encouraging minority participation. In some communities, full participation of racial minorities has resulted in constructive approaches to the racial minority aspects of urban renewal. In others, lack of such participation appears to be a serious detriment.[2]

While full citizens' participation may be a prerequisite for successful and equitable urban renewal, the most difficult and probably the most important test of the program is in the relocation of displaced families. This is particularly true with respect to Negro families whose mobility is limited not only by virtue of their economic status but also by racial restrictions. HHFA and URA recognize that they are "not as free as others to move into new neighborhoods and other housing" because of their "limited opportunities in the housing market." [3]

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[98] *Id.* at 4, 6, 21.

[99] *Id.* at 9, 10.

[1] *Id.* at 10.

[2] See HHFA–URA, Technical Memorandum No. 19, *Racial Minority Aspects of Urban Renewal,* December 1958, Washington Hearing, p. 133 *et seq.* See also testimony about the large interracial Citizens Advisory Committee on Urban Renewal in Atlanta. (Regional Hearings, pp. 493–494.)

[3] Washington Hearing, p. 6, 21.

URA advises communities that in drawing up a workable program—

> Particular consideration should be given to the problem of rehousing displaced minority group families, and the availability to them of both sales and rental dwelling units.[4]

Here URA is following a clear congressional mandate that in all urban renewal programs there be provision for an adequate number of "decent, safe, and sanitary dwellings" available to displaced persons either "in the urban renewal area or in other areas not generally less desirable."[5]

HHFA Administrator Mason emphasizes that urban renewal "must result in adding to the living space available to the people being displaced."[6] To assure this, URA requires of each community an outline of the ways in which forseeable problems in the rehousing of minority families can be met. It requires that specific data be submitted with the preliminary project report showing the number of families broken down as to race to be rehoused in new and existing housing and the proposed solutions to the problem of relocating minority families, with special attention to racial availability of housing accommodations. To help ward off the creation of new slums or the lowering of standards in an area, URA has special information requirements with regard to the use of existing housing for relocation in so-called racial transition areas. These are designed to—

> . . . assure the adequacy and availability of vacancies within such area and the effectiveness of the locality's fire, health, building, and other regulations designed to prevent illegal conversion of residential structures, overcrowding, and other conditions that lead to the deterioration of such areas.[7]

Since existing housing is not likely to be sufficient to solve all the rehousing problems, particularly of displaced Negroes, URA requires that communities include in their planning studies "the question of whether, taking into account the new housing which will be available to them in the project area, a compensating expansion of living area for racial minorities will be needed.[8]

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[4] HHFA, *How Localities Can Develop a Workable Program for Urban Renewal*, rev., December 1956, p. 10.

[5] The statutory requirement is that "there be a feasible method for the temporary relocation of families displaced from the urban renewal area, and that there are or are being provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and commercial facilities and at rents or prices within the financial means of the families displaced from the urban renewal area, decent, safe and sanitary dwellings equal in number to the number of, and available to, such displaced families and reasonably accessible to their places of employment." Sec. 105(c), title I, Housing Act of 1949, as amended. 42 U.S.C.A. 1455(c).

[6] Washington Hearing, pp. 8–9.

[7] URA, Manual of Policies and Requirements for Local Public Agencies, pt. 2, ch. 6, sec. 4, p. 3.

[8] *Id.* at 4. An indication of the pressing need of additional low-cost housing is the fact that approximately half of the families to be displaced by urban renewal highway construction and other public activities are estimated by HHFA to be eligible for public housing, i.e., to be without means for adequate rehousing except low-rent subsidized projects. See House Report No. 86, Committee on Banking and Currency, 86th Cong., 1st sess., p. 28.

HHFA Administrator Mason indicated to the Commission that he intends to take action to assure that the intentions of Congress and URA and the "potentials in the workable program" in terms of equal opportunity for minorities are more fully realized by "exercising more aggressive leadership to accomplish workable program objectives." He said that "much deeper meaning must be breathed into this operation." [9]

Some indication of the importance of such a review and strengthening of URA's workable program requirements may be found in the statistics on the number of families that have been or are scheduled to be displaced and on the experience in rehousing them.

In 347 projects approved for advanced planning or execution as of December 31, 1958, there were estimated to be 154,000 families who would be displaced. In 303 of these projects, some 59,000 white families were scheduled to be displaced as against 74,000 (or over 55 percent) nonwhite families.[10]

Tables 23 and 24 below indicate the type and condition of rehousing accommodations into which displaced families moved from the beginning of the program through December 31, 1957. They show that nearly 9 out of every 10 displaced families that moved into low-rent public housing were nonwhite. But the data would indicate that there was not sufficient public housing to accommodate those eligible. On the basis of income reported by the families, about 50 percent of those in acquired properties (42 percent white and 54 percent nonwhite) were apparently eligible for admission to federally aided low-rent housing projects. Of the 42,998 families relocated as of December 1957, about 21,700 had originally been considered eligible for admission. But only 8,821 of these, or 41 percent, had actually moved into such projects.[11]

As indicated in table 24, 69 percent of the reported families were rehoused in locally certified standard housing and a little more than 6 percent in substandard housing. It must be pointed out, however, that the results were not the same in all projects and in some the percentage of displaced families relocated in substandard housing was very high.[12]

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[9] Washington Hearing, p. 10.

[10] HHFA–URA, Urban Renewal Project Characteristics, Dec. 31, 1958, table 3, p. 8.

[11] HHFA–URA, Relocation from Urban Renewal Project Areas, through December 1957, pp. 7–10.

[12] As shown on both tables, 4,426 families, 86 percent of them nonwhite, left project sites before relocation started and left no forwarding address. There is no data on the quality of their rehousing accommodations. This represents a little more than 10 percent of the total families displaced, but this percentage has not been the same in all projects. In Chicago's Lake Meadows project, of the 3,416 families in the acquired properties, none of whom were white, 976 families, more than 25 percent, were still unaccounted for at the end of 1957. In Detroit's Gratiot project, 20 percent of the families were unaccounted for. *Id.* p. 8, tables pp. 17, 24, 30.

TABLE 23.—*Rehousing accommodations: Families relocated continental United States through December 1957*

From—HHFA-URA, Relocation from Urban Renewal Project Areas, p. 7.

Type of rehousing	All families		Families by color			
			White		Nonwhite	
	Number	*Percent*	*Number*	*Percent*	*Number*	*Percent*
Families relocated	42,998	100.0	12,626	100.0	30,372	100.0
Private	33,196	77.2	11,281	89.3	21,915	72.2
Rental housing	17,853	41.5	6,640	52.6	11,213	36.9
Purchased housing	5,412	12.6	2,114	16.7	3,298	10.9
Tenure not reported	3,152	7.3	798	6.3	2,354	7.8
Evicted	646	1.5	110	0.9	536	1.8
Relocated out of city	1,627	3.8	982	7.8	645	2.1
Whereabouts unknown	4,426	10.3	617	4.9	3,809	12.5
Others	80	0.2	20	0.1	60	0.2
Public	9,802	22.8	1,345	10.7	8,457	27.8
Federally aided low-rent	8,821	20.5	1,160	9.2	7,661	25.2
Other permanent housing	981	2.3	185	1.5	796	2.6

TABLE 24.—*Condition of rehousing accommodations: Families relocated continental United States through December 1957*

From HHFA-URA, Relocation from Urban Renewal Project Areas, p. 10.

Item	All families		Families by color			
			White		Nonwhite	
	Number	*Percent*	*Number*	*Percent*	*Number*	*Percent*
Families relocated	42,998	100.0	12,626	100.0	30,372	100.0
Condition reported	32,480	75.5	10,042	79.5	22,438	73.9
Standard housing	29,802	69.3	9,430	74.7	20,372	67.1
Public	9,802	22.8	1,345	10.7	8,457	27.9
Private	20,000	46.5	8,085	64.0	11,915	39.2
Substandard housing	2,678	6.2	612	4.8	2,066	6.8
Not yet inspected	1,283	3.0	542	4.3	741	2.4
Condition not reported	2,456	5.7	313	2.5	2,143	7.1
Data not available	6,779	15.8	1,729	13.7	5,050	16.6
Evicted	646	1.5	110	0.9	536	1.8
Relocated out of city	1,627	3.8	982	7.8	645	2.1
Whereabouts unknown	4,426	10.3	617	4.9	3,809	12.5
Others	80	0.2	20	0.1	60	0.2

There has been some improvement in the relocation of nonwhite families in standard housing. The URA reported to the Commission that "in the 27 months ending in December 1957, 71.1 percent of the relocated nonwhite families were rehoused in standard housing, both

public and private, as against 64.4 percent through September 1955." Similarly, "in the same period, 7 of every 10 nonwhite families were rehoused in private housing as against less than 5 of every 10 such families, relocated through September 1955." [13]

While this overall record of relocation appears on its face to be relatively encouraging, the problem is growing and the preparation for it of some communities appears to be inadequate. In Chicago, it is estimated that in the next years some 131,000 persons will be displaced as a result of the city's approved and planned urban renewal program. Of these 86,000 or 67 percent are estimated to be Negro.[14]

Against the background of Chicago's increasing Negro population, the restrictions on Negro residence and the limited increase in the housing supply available to Negroes (see *supra* pp. 429–446), it is unlikely that the present main method of acquiring additional living space through "blockbusting" can provide sufficient rehousing accommodations for displaced Negroes.

The primary responsibility for rehousing families displaced by urban renewal rests with the localities, but HHFA and URA share that responsibility by Act of Congress. In certifying Workable Programs submitted by localities, the HHFA Administrator gives his stamp of approval to the rehousing programs contemplated by the locality. Once approval has been given, localities are for the most part left to execute the program with very little supervision by URA other than the reporting of certain information.[15]

In addition to relocation problems, the redevelopment phase of urban renewal may result in an overall reduction in living accommodations for nonwhites. Slum and blighted areas previously occupied by low-income minority families may be cleared and replaced with housing accommodations far beyond the means of those who lived in the area. While such improvements may increase the overall housing inventory in the community, they do not add to the supply

[13] Washington Hearing, p. 23.

[14] Regional Hearings, p. 862.

[15] Apparently the Federal agencies receive no racial statistics at all from New York City. The Commission was told that: "The Urban Renewal Administration has conditionally approved the request of the city's Committee on Slum Clearance to waive the requirements for reporting racial characteristics of title I site occupants, a provision generally designed to protect minorities from being rehoused in a restricted market. The conditions for granting the waiver are that URA will review operating experience to determine whether the fair housing practices law is in fact implemented in such ways as to assure compliance with Federal statutory requirements respecting relocation as provided in sec. 105(c) of the Housing Act of 1949 and other relevant contractural obligations. They also required descriptions of the 'administrative arrangements' for assuring enforcement and of 'supervisory controls' established within the Committee on Slum Clearance, Bureau of Real Estate, and other governmental agencies concerned." Regional Hearings, p. 113.

Whether the limited experience of the New York laws warrants such an abandonment of racial statistics is indeed questionable. See *id.* at 80. Chairman Robert Moses of the city Committee on Slum Clearance declined the Commission's invitation to testify at the New York hearing.

of low-cost standard housing available to the vast majority of those displaced. Thus adjacent low-income or nonwhite areas are subject to further overcrowding and the creation of new slum areas.

While former nonwhite residents are often unable for economic reasons to take advantage of the new housing built in redeveloped areas, other higher income nonwhites have in increasing though small numbers been able to do so. The Commission was told that in March of this year, "nonwhite occupancy existed or could be expected in 40 of a total of 46 projects" in the United States that are either completed or under construction.[16]

However, the problem of providing opportunity for decent low-cost housing for displaced persons with lower incomes remains a pressing one. One of the most promising Federal programs to encourage such housing for families displaced by urban renewal projects is known as Section 221.[17] Although jurisdictionally under FHA, it is an important relocation tool of urban renewal.[18] Under Section 221, mortgage insurance with a maximum term of 40 years and a minimum down payment of only $200 is available if requested by a community undertaking urban renewal and if certified by the HHFA Administrator. Although these terms appear attractive, Section 221 has not yet resulted in encouraging the large quantities of low-cost housing required for displaced persons. Racial restrictions on sites for 221 housing and the low limitation on the maximum mortgage insurance authorized appear to be the chief obstacles to the program.

In Atlanta, the Commission was told that zoning restrictions have been used by the Board of Aldermen to prevent the use of certain lands for 221 housing for Negroes. Said the spokesman for the Empire Real Estate Board:

> Here FHA issues allotments under their Section 221 Program as to race of occupancy—so many allotments for white and so many for nonwhite. When this program was first initiated the FHA approved approximately 15 sites for nonwhite housing, the City of Atlanta turned down approximately 12 of them because they could not be "politically cleared". For the most part, these political roadblocks and denials were associated with race. This hampered the 221 program. One site was approved by the city provided the contractor left a 200 foot buffer strip of vacant land between the 221 houses for nonwhites and the existing white community across the street.[19]

In Chicago the complaint of a city official with an intimate knowledge of relocation problems was that "the mortgage limit is $9,000 and $10,000 for high-cost areas. We got the approval of the Federal agencies to get the limit increased to $10,000, which, however, for an

[16] Washington Hearing, p. 23.
[17] 12 U.S.C. (Supp. V) 1715 l.
[18] *Id.* at 9.
[19] Regional Hearings, p. 543.

area like Chicago makes it no more usable than the $9,000 one".[20] Similarly, the northwest area of Atlanta where there is available land for the construction of new housing for Negroes, the land costs are so high that Section 221 housing cannot be built within the present authorized mortgage limits.[21]

The whole Section 221 program is now under full review by HHFA Administrator Mason. A FHA Intergroup Relations Specialist has been assigned to investigate whether the "comments that a relatively low proportion of the housing units insured under Section 221 are actually being occupied by eligible displacees . . . are true or whether the program might be serving well by simply adding to the housing supply".[22] In addition the review is designed to ascertain (1) how much 221 housing is being produced; (2) whether or not it is available to minority groups; (3) whether or not it is being produced in proper locations; and, (4) whether or not buyers and renters find it adequate for living as American citizens expect. From this study HHFA Administrator Mason expects to find the "essential clues for strengthening the 221 operation".[23]

The clearance of slums occupied largely by Negro residents and their replacement with housing accommodations beyond the means of most Negroes gives rise to the question whether slum clearance is being used for "Negro clearance." Small areas occupied by Negroes may be selected for urban renewal, forcing them to move into other areas that are predominantly Negro, thereby reinforcing or perhaps establishing for the first time strict patterns of residential segregation. While this might violate the congressional requirement of relocation in "areas not generally less desirable" than those originally occupied by the displaced persons, there do not appear to be any URA provisions about such a situation or any safeguards against the use of the urban renewal program to impose residential segregation patterns.

Despite the impact of urban renewal activities on minority groups, URA does not maintain an Intergroup Relations Service to help communities deal with the problems that are bound to arise. Instead, it utilizes the services of FHA's and PHA's field Intergroup Relations personnel. URA has only one individual designated Intergroup Relations Officer on its Washington staff. The Commission was informed that URA is planning to "increase the use of FHA and PHA intergroup relations specialists, stationed in the field, to assist HHFA Regional Administrators with urban renewal matters." [24]

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[20] *Id.* at 703.

[21] *Id.* at 543, 554. As reported by the Bureau of Labor Statistics, the median sales price on a house has risen from $12,300 in 1954 to $13,700 in 1955 and to $15,500 in 1956. For 1957 the estimated median sales price was $15,100. Report of Senate Committee on Banking and Currency, Housing Act of 1959, Rept. No. 41, 86th Cong., 1st sess., p. 49.

[22] Washington Hearing, p. 9.

[23] *Ibid.*

[24] *Id.* at 22. See supplementary information, *id.* pp. 155 ff.

While it is true that the urban renewal program is based on the concept that cities will, with Federal aid, face up to and solve their slum and blight problems, it is to be expected that the Federal agency administering the program will establish the procedures and machinery necessary to make sure that the purposes of the legislation are achieved with equal protection for all affected by it. As President Eisenhower told the Congress in 1954:

> We shall take steps to insure that families of minority groups displaced by urban redevelopment operations have a fair opportunity to acquire adequate housing; we shall prevent the dislocation of such families through the misuse of slum clearance programs; and we shall encourage adequate mortgage financing for the construction of new housing for such families on good, well located sites.[25]

State Advisory Committee Reports

The Commission's State Advisory Committees discussed problems of urban renewal. The facts, statistics and opinions in the following excerpts are those given by the respective State committees, and have not been verified by the Commission.

ALASKA

Several of Alaska's urban renewal programs have involved areas of high Negro or native concentrations. "By the very complexity of the program and its attendant problems, urban renewal is slow and does not keep pace with the need."

INDIANA

South Bend

In regard to community participation, the city council adopted an ordinance to establish an Urban Renewal and Urban Redevelopment program and appointed five commissioners and five trustees shortly thereafter. There are no nonwhite members on this commission. "The local Urban League and other interested organizations have gone on record urging nonwhite participation at the policy-making level.

"Four areas in South Bend have been designated for redevelopment. There is a predominance of nonwhite occupancy in all of these areas." 40 to 50 percent in one; 60 to 80 percent in another; 90 percent and 92 percent in the remaining two.

KANSAS

"Urban Renewal will tend to create more pressures and problems for minority group members. A large percentage of the people to be relocated are in minority groups. When relocated they will more than likely be relocated in segregated areas, thus reenforcing the segregation pattern and creating greater pressure in those areas to 'break out'."

Kansas City

"Urban Renewal in Kansas City is under way. Three areas are being renewed, two of which are entirely residential rather than commercial area renewals. In one of these two areas, public housing will be constructed. In

[25] Message to Congress, Jan. 25, 1954, 100 *Congressional Record*, pp. 737–738.

the other, '221' housing will be built. The Kansas City Urban Renewal Agency has adopted a resolution ensuring open occupancy in these areas, 92 percent of whose people are minority group members."

Topeka

"The Urban Renewal program in Topeka is well under way. . ." 47 percent (all Indians, Negroes, and Mexican-Americans) of those displaced in Topeka by an urban renewal project will not be able to afford new housing.

"Urban Renewal authorities . . . are trying to relocate people without public housing. They feel that public housing would crowd all of the displaced persons together and would not take care of people's individual needs on an individual basis. The Urban Renewal Authority has solicited a commitment of $50,000 in voluntary contributions from local citizens which would be used to supplement rentals for people who could not afford to pay rents in other housing after being moved out of the urban renewal areas. The money, however, has not yet been put in a fund."

KENTUCKY

Lexington

"There is a great need for an urban renewal project in Lexington." One attempt was made by the Urban Renewal Commission to clear a slum area, but the relocation problem was too great an obstacle. (The cleared land in the area designated was to be redeveloped for white occupancy while those people displaced would have been Negro.) "The Commission is now defunct," and the only organization in the field is a Citizens Association for Planning. (Both of these groups have Negro members.) "The problem of relocation is still the major obstacle to slum clearance. . . . It is possible that with the new '220-221 rehabilitation program' of the Federal Government . . . slum clearance could be successful today."

MISSOURI

St. Louis

The St. Louis Housing Authority reported to the State Committee that: "Minority groups from urban renewal project areas are being relocated in decent, safe, and sanitary accommodations wherever these may be found within the locality. However, except for low rent public housing, rental housing available to minority groups is generally located in areas where 50 percent or more of the families are of the same racial minority."

MONTANA

"Our urban centers are relatively small. They are also relatively new when compared with urban centers in some other parts of the United States. It follows then that our blighted areas, if they can be called such, are very small. Nearly all our towns of any size, and particularly the larger ones, do have areas that need and probably should improve their standard of housing. . . . There are foresighted persons who have been thinking about and bringing this problem to the attention of the governing bodies and citizens in at least some of the larger towns."

NEW YORK

"The fact is that the Title I program is geared to producing luxury or semiluxury housing or nonhousing reuse of the land, therefore, in effect, depriving the vast majority of the displacees from the benefits of this Federal government program.

"Although renewal programs are meant to clear slums, their net result has too often been the transfer of slums to adjoining areas.

"The frequent policy of locating new public housing projects in blighted Negro districts not only helps to transfer the blight but also contributes to hardening the patterns of economic and racial segregation."

OHIO

"There was a good deal of discussion, of course, on the additional and better use of 221 Housing. It seems that much could be done to use this section of the law to provide additional housing for open occupancy groups if more were known about it. An outstanding example of what has been accomplished: A Columbus builder of houses selling at $10,500, no down payment with 40-year mortgages available, 100 percent insured. As a result of the open occupancy provision these homes were sold to both white and colored and no racial incidents developed."

Cincinnati

The Director of the Cincinnati Department of Urban Renewal told the Committee that FHA Section 221 has resulted in 50 purchases of homes by Negroes. He believes that Section 221, when it becomes better known to lenders and buyers, will contribute substantially to the Negroes' access to good homes.

Columbus

The Slum Clearance and Rehabilitation Commission of Columbus reported to the Committee that "practically no new housing has been built for Negroes, except FHA 221 housing which has a policy of open occupancy."

OREGON

In reference to urban renewal and other redevelopment programs in Portland: "No organized program for relocation has been undertaken. The mayor of the city has called on the Realty Board, the Home Builders Association and others to assist in relocating the nonwhites so displaced outside segregated areas, but the families are actually 'on their own.'

"It is probable that some minority families will move into the more segregated areas and others will settle in other parts of the city. The net effect may be to decrease segregation somewhat. . . ."

PENNSYLVANIA

"In several cities of the Commonwealth which are undertaking redevelopment programs the restrictions placed upon the free movement of Negroes in the housing market are at this moment impeding the task of rebuilding. Mayor Richardson Dilworth of Philadelphia has declared: 'Urban renewal cannot and will not work within the framework of a racially restricted housing market.' "

Erie

About one-half of the displaced white families moved without help from the city's Relocation Office, but only about one-tenth of the Negro families were able to relocate without assistance.

Philadelphia

"* * * of 2,085 relocation cases handled in a 2-year period, 95 percent were Negro. Only 3 of every 10 of these families relocated to adequate housing."

Pittsburgh

"* * * A study of a mixed area already overburdened by a heavy Negro influx from a section undergoing redevelopment showed sharp increases in

conversion to smaller units accompanied by increases in overcrowding. Areas thus overcrowded soon deteriorate thus requiring additional redevelopment."

WEST VIRGINIA

Wheeling

"Definite progress made since 1954 through the city's adoption of a workable program for urban renewal. Master plan has been prepared. * * * Also urban renewal projects hold key to future betterment of housing conditions in city."

Voluntary Home Mortgage Credit Program (VHMCP)

The Voluntary Home Mortgage Credit Program (VHMCP) is another part of the Federal housing program designed to facilitate credit for housing. VHMCP was established by the Housing Act of 1954 to help make mortgage money available to people in small communities and for minority groups in any area who cannot obtain FHA-insured or VA-guaranteed loans on terms as favorable as are generally available to others in the same locality.[26]

As its name suggests, the program is based on voluntary action by private lenders with their own investment funds. It was instituted at the suggestion of mortgage investing institutions as an alternative to direct Government lending. It is operated by a national committee, of which the Housing and Home Finance Administrator is chairman, and by five regional committees. The national and regional committees are composed of 200 industry representatives who serve without pay; they include private lenders, builders, real estate brokers, and lumber dealers. There are Negro members on all regional committees and on the national committee. The role of the Federal Government in the program consists providing a small staff, facilities, and advice.[27]

An individual member of a minority group seeking to purchase a home or a builder seeking commitments for Government backed loans to finance the sale of houses to minorities may submit an application to a regional committee. The committee refers the application to a lending institution which is participating in the program. The referral process is repeated until the loan is placed or it becomes clear that the loan cannot be placed. The participating institutions approve or reject applications according to their own credit tests, standards of construction, and other criteria.[28]

For the 4½-year period ending June 1, 1959, the VHMCP placed 39,056 loans, thereby providing over $383 million of FHA- and VA-insured mortgages for previously disadvantaged borrowers. More than 8,000 of these loans, totaling $80 million, were for minority

[26] Washington Hearing, p. 25. Public Law 560, title VI, 83d Cong., 2d sess., 1954, 68 Stat. 590, 640. It was originally established for a 3-year period, then extended until July 31, 1959, by the Housing Act of 1957, 71 Stat. 304.

[27] *Id.* at 25, 27. There are 19 paid Federal employees. The total operating budget for the fiscal year 1959 was approximately $250,000.

[28] *Id.* at 26.

group members in metropolitan areas. In these areas VHMCP placed 60 percent of the minority applications it received. Its overall placement ratio of loans for minority applicants is higher than that for nonminority applicants. In addition VHMCP has arranged the financing of 3 project loans covering 546 open-occupancy rental units totaling over $3 million.[29]

The total number of minority-group applications has been "far smaller than had been originally anticipated," according to the Executive Secretary of the VHMCP, Mr. Joseph B. Graves. This shows, he said, "that there is a broad gap between need and demand. A distinction must be made between the need of minorities for more adequate housing, which is known to be great, and the actual market demand for FHA-insured and VA-guaranteed mortgages from those members of minority groups who are qualified in terms of income and credit for FHA and VA financing." [30]

The low level of minority applications may be some measure both of continuing restrictions against Negroes in the whole housing market, which Mr. Graves stressed, and of improvements generally in mortgage financing for Negroes. It may also be attributable to a lack of knowledge of VHMCP's existence or an understanding of the service it renders.

Mr. Mason noted that VHMCP would be made available to minority groups "to the fullest extent of our ability to make people understand it is available".[31] VHMCP is taking a number of steps to make the program better known in cooperation with various Negro organizations, including the National Association of Real Estate Brokers. As a result, according to Executive Secretary Graves, the volume of minority applications is "increasing rapidly." During the first 5 months of 1959, 31 percent of the total loans placed by VHMCP were for members of minority groups.[32]

It is clear, however, that whatever the reasons, VHMCP has neither stimulated any large volume of construction of new homes for minority group families, nor apparently has it relieved to any appreciable extent the shortage of mortgage credit for minority groups. However, it has made available mortgage credit to some members of minority groups who otherwise would not have had access to it. Mr. Graves testified that another of the "heartening byproducts of the VHMCP is the growing acceptance of the fact that loans to minorities are safe investments." He added: "Through the VHMCP, private lenders have discovered that the delinquency rate is as low for well-

[29] Additional loans to minority groups have been made in small communities but VHMCP has not maintained racial statistics for these areas. *Id.* at 26, 218.

[30] Supplemental statement, Washington Hearing, pp. 155 ff. See also comment of Mr. Mason, *id.* at 36.

[31] *Id.* at 36.

[32] Supplemental statement, *id.* at pp. 155 ff.

checked loans to minorities as for loans made to the general public. By forcefully focusing attention upon the worth of mortgage loans to minorities, the VHMCP has contributed greatly to a more equitable flow of mortgage credit to these groups." [33]

STATE ADVISORY COMMITTEE REPORTS

Only three of the Commission's State Advisory Committees commented on the program of the VHMCP. The facts, statistics, and opinions in the following excerpts are those of the respective State committees, and have not been verified by the Commission.

ILLINOIS

Chicago

"While this program has been operating in Chicago since 1955, we have no information regarding the success of the program with respect to the extension of housing integration."

KENTUCKY

Lexington

"At St. Martin's Village one prospective purchaser tried to obtain a loan from a particular investor but his application was refused. He then applied through the VHMCP and obtained a loan from the investor who had originally refused him * * *. The first 21 loans in St. Martin's Village went through VHMCP but the next several loans were made by the investor directly. [The developer] attributes this to a history of Negro loans being established with these particular investors."

MISSOURI

Kansas City

VHMCP has been helpful in securing mortgage credit in Kansas City and in smaller communities.

Federal National Mortgage Association (FNMA)

The Federal National Mortgage Association (FNMA) known as "Fannie Mae," was chartered by Congress in 1938.[34] The general policies governing its operations are determined by its Board of Directors, of which the HHFA Administrator is Chairman. Operated as a business-type corporation, it purchases and sells residential mortgages that have previously been insured by FHA or guaranteed by VA.[35] Its two primary functions are both pertinent to minority housing problems.

First, its secondary market operations have served to support the VA loan-guaranty program at the VA's lower fixed rate of interest. By agreeing to purchase loans which private investors would not

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[33] *Id.* at 27.

[34] 48 Stat. 1246, 1252 (1938). It was recharted in 1954 as a constituent agency of HHFA. 68 Stat. 590, 612 (1954).

[35] Washington Hearing, p. 24.

FNMA declines to purchase any mortgage if the title review made at the time of delivery of the mortgage discloses that any restriction with respect to race has been created and filed of record subsequent to Feb. 15, 1950 (*ibid.*).

purchase, it has enabled lenders to originate loans for immediate sale to FNMA. Since it is limited to the purchase of loans of not more than $15,000, this program has helped to direct government assistance to middle and lower priced housing. It is estimated that a substantial proportion of the relatively small number of VA and FHA mortgages on properties occupied by nonwhites has been purchased by FNMA.[36] FNMA reported that in 1955 some 13 percent of the mortgages purchased under its secondary market operations were on housing for minority groups.[37]

Second, its special assistance functions involve the use of government funds for the purchase of home mortgages under special housing programs for "segments of the national population which are unable to obtain adequate housing under established home financing programs."[38] This amounts to direct government lending.

Congress has designated certain programs for such special assistance and authorized the President to spend up to $950 million. The President at his discretion may designate particular housing programs eligible for special assistance. Thus far all but about $400 million has been allotted by the President: some $70 million for housing for the elderly, lesser amounts for housing programs in Guam and Alaska, for victims of disasters, and the largest amount, some $400 million, for urban renewal housing (FHA sections 220 and 221).[39]

An example of the effect of the special assistance program aid in providing new low-rent housing was described in the Commission's New York hearing by a large developer, Mr. James Scheuer, who testified that—

> I just finished an FHA slum clearance job in Cleveland, Ohio, a garden apartment project designed for worker families, many of them minority families. A two-bedroom garden apartment cost me approximately $12,350. Under the regular FHA financing rates of 5 percent interest, 2 percent amortization and one-half percent FHA insuring fee, the rent for that two-bedroom apartment came out at $119. Now, I was able to enjoy . . . Fannie Mae special assistance fund moneys . . . That reduced interest from 5 to 4½ percent. It reduced the amortization from 2 to 1½ percent, and there was the same one-half percent insuring fee. That brought the rents down from $119 to $107.[40]

Another witness at the New York hearing made a proposal for the use of FNMA funds specifically for assistance to open occupancy housing developments. Mr Emil Keen, chairman of the Long-Range Planning Committee of the New York State Home Builders Association, recommended that the President authorize FNMA to set aside

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[36] Information supplied by Dr. Davis McEntire, Research Director of the Commission on Race and Housing, Berkeley, Calif.

[37] HHFA, *9th Annual Report*, 1955, p. 355.

[38] Public Law 560, Title III, sec. 301(b), 83d Cong., 2d sess., 1954.

[39] Washington Hearing, pp. 40–41. See also report of the Senate Committee on Banking and Currency, Housing Act of 1959, Rept. No. 41, 86th Cong., 1st sess., pp. 50–51.

[40] Regional Hearings, p. 288.

$250 million for the purchase at par of mortgages on homes to be offered on an open occupancy basis. Mr. Keen believes that the release of such funds by the President "would do much to take this entire matter out of the realm of theory and put it into the realm of practice" by encouraging mortgage lenders to participate in open occupancy programs. Pointing out the need to encourage "experiment in this relatively untried field" which lending institutions "feel may be fraught with more than normal risk," Mr. Keen rebutted the argument that the Federal Government should not provide such special assistance.

> For one, I cannot accept and must reject in advance as unfactual and perhaps hypocritical the suggestion that for the Federal Government to encourage such open-occupancy development is un-American and class legislation. I believe such arguments are spurious and completely unjustifiable in light of the public policy with regard to housing which, for many years, has been giving preference in financing through VA to Armed Forces veterans, has been giving preference in financing terms through FHA to moderate-income families, has been giving preference in housing accomodations through public housing to low-income families and has been aimed at decent, safe and sanitary housing for all American families.[41]

Mr. Keen's proposal was discussed at the conference held by the Commission with Federal housing officials. HHFA Administrator Mason based his opposition on the ground that since there is a law in New York State (and elsewhere) requiring open occupancy in housing it seemed to him improper to "go out and give these people who live up to what they are supposed to do any incentive." [42]

Mr. Mason agreed that there is a problem of finding appropriate ways to encourage open occupancy projects. "Let's try a system of rewards in solving our housing problems," he suggested to the Commission. Whether the plan he said he is working on to implement this

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[41] *Id.* at 276–77.

[42] Washington Hearing, p. 40. In 1957 when similar proposals were being pressed in Congress to establish minority groups as one of a number of categories for special assistance funds, the HHFA opposed this on the ground, among others, that the needs of minority group families could be better met through general programs. Senate Subcommittee on Housing of the Committee on Banking and Currency, Hearings, Housing Act of 1957, 85th Cong., 1st sess., 1957, p. 62–64; House Subcommittee on Housing of the Committee on Banking and Currency, Hearings, Housing Act of 1957, 85th Cong., 1st sess., pp. 759–60. See S. 1633 and H.R. 1060, 85th Cong., 1st sess., 1957. While the final act contained no special provision for minorities, the special assistance functions of FNMA were substantially expanded. See HHFA, *Detailed Summary of the Housing Act of 1957*.

In the Senate hearings, p. 595, Mayor Dilworth of Philadelphia, representing the American Municipal Association, stated that "the only way we are going to be able to take care of the minority groups * * * is by direct loans from the Government." In the House hearings, p. 536, Congressman Charles Bennett of Florida rejected the suggestion that minority housing needs could be met without special assistance, stating: "I regret to say I think nothing but a head-on meeting of this problem will be very much of a solution * * *. There is no assurance that any of these small-house loans will go to Negroes. The main problem is the fact that mortgage money just doesn't run to colored people."

"system of rewards" will include use of FNMA's special assistance program, he did not say.[43]

Veterans Administration (VA)

The VA administers a loan guaranty and a direct loan program. These have been of considerable assistance to nonwhite veterans, although the VA has not given special attention to the minority housing problem.

Among postwar benefits to veterans was an opportunity to buy a home or farm with little, and at one time with no downpayment.[44] Because of its more liberal policies, VA benefits have been available to more lower income home purchasers, and hence to more nonwhites, than has FHA insurance. In 1950, after only 5 years of operation, it was estimated that the VA had guaranteed almost as many mortgages on properties occupied by nonwhites as had the FHA after 15 years of operation. In 1954 and 1955 nearly 30 percent of all new nonfarm dwelling units were built with the help of VA loan guarantees.[45]

The VA policy is to make available the programs it administers to all qualified veterans or eligible dependents of a veteran without inquiry into the race, creed, or color of the applicant. It has no statistics on the race of the recipients of either direct loans or loan guarantees.[46] While FHA at first favored residential segregation of the races and has since shifted to support of open occupancy housing wherever possible, VA seems always to have been neutral on the subject.

Like FHA it has a regulation which was promulgated in 1950, preventing the use of racial restrictive covenants. VA does not refuse to issue guarantees on loans made by private lenders if the property is encumbered by racial restrictions created and recorded after February 15, 1950. But, the lender who makes such a loan loses his option to convey the property to the VA in the event of default or foreclosure. According to the VA, the loss of this option has the effect of causing the lender not to make loans on racially restricted property. The VA reports that "So far as we know, no loan has been guaranteed on a property covered by the proscribed restriction." In addition, the regulation provides that in the event racial restrictions are created and filed by a borrower subsequent to February 15, 1950, such action may be considered by the holder of the loan to constitute a default and he can declare the entire unpaid balance of the

[43] Washington Hearing, p. 11.

[44] Serviceman's Readjustment Act of 1944 (GI Bill of Rights), 38 U.S.C. 694.

[45] Davis McEntire, *Race and Residence*, report prepared for Commission on Race and Housing, ch. 17, p. 22, table 3, ch. 13, p. 44, based on 1950 Census, *Residential Financing*, pt. 1, ch. 3, tables 18 and 19.

[46] Washington Hearing, p. 29.

loan due and payable, and, in this event, he would have protected his right to exercise the option to convey the property to the VA.[47]

Under its regulations for direct loans, VA will not make any loans to purchase residential property encumbered by a racial restrictive covenant which was created and filed of record subsequent to February 15, 1950. A subsequent recording of such a restriction by the borrower can constitute a default. In the more than 9 years since the regulation has been in effect the VA has waived the requirements of the regulation only three times and each involved a hardship case, two of which were the result of errors by VA employees.[48]

VA now has cooperating agreements with four States which have housing antidiscrimination laws. They are New York, New Jersey, Washington, and Oregon. Connecticut has requested a similar agreement. Under these agreements, VA will advise the State's enforcement agency of new housing developments which are submitted to it for approval, and the State in turn advises the builder of its antidiscrimination statute. VA requires that the State agency find that a builder has violated the State law before it will initiate an investigation to ascertain whether the violation involved the sale of housing to veterans. If so, VA will suspend the builder from its program. As of June 10, 1959, no such situation has arisen.[49]

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[47] *Ibid.*

[48] *Id.* at 30.

[49] *Ibid.* See Veterans' Administration's instructions to its New York regional office—dated May 27, 1958.

"(*a*) When an allegation of discrimination by a builder has been sustained at a public hearing by the State Commission Against Discrimination and a cease and desist order issued to the builder, the Commission will inform the regional office of the facts of the case. The notification by SCAD will be furnished to the regional office which issued the master certificate of reasonable value on the units constructed by the builder.

(*b*) Upon receipt of such notification from SCAD, the regional office will review the facts developed by the Commission. Care must be exercised to ascertain that an eligible veteran seeking to finance a transaction with a VA guaranteed or direct loan was the subject of the discrimination which was the basis of the issuance of the cease and desist order to the builder. If the regional office finds (based on the facts developed by SCAD and such facts as the regional office may develop from its own inquiry) that an eligible veteran was involved in the discrimination which caused SCAD to act against the builder, the regional office will notify the builder by letter that the VA will refuse future appraisal requests submitted by the builder unless corrective action is taken immediately. If the builder fails to take corrective action promptly, the regional office will issue the builder a letter notifying it that future requests for appraisals will not be accepted on any units proposed to be constructed by the builder. The notification to the builder will state that the basis of the regional office action is the facts developed in the public hearing by SCAD and its finding that the builder has violated the Metcalf-Baker law which prohibits discrimination in the sale of Government-assisted housing. The letter will also state that the discrimination which the builder has engaged in is considered to be an unfair or prejudicial marketing practice or method under the provisions of sec. 504(c) of the Serviceman's Readjustment Act of 1944, as amended. The letter will conclude by advising the builder of his right to a hearing under VA Regulation 4361 by filing a request therefor with the Administrator within 10 days after receipt of the notice of the refusal to appraise. Officials of the New York State Commission Against Discrimination will extend full cooperation to regional offices in the event a VA hearing on an appraisal refusal becomes necessary.

(*c*) When the discrimination which was the basis of the action by SCAD has been discontinued in accordance with arrangements between SCAD and the builder, SCAD will

It is interesting to note that should the VA suspend a builder that has been found by a State antidiscrimination agency to be discriminating against veterans by reason of race, the VA will inform the builder "that the discrimination which the builder has engaged in is considered to be an unfair or prejudicial marketing practice or method under the provisions of section 504(c) of the Servicemen's Readjustment Act of 1944, as amended." If such discrimination is covered by that provision of the act, it is difficult to see why it is applied only in States with antidiscrimination laws.

STATE ADVISORY COMMITTEE REPORTS

For excerpts from State Advisory Committees on the VA see the excerpts from Kansas, Kentucky, Nebraska, Utah, and Washington in the excerpts above on FHA. The facts and opinions in the following item from the Oregon State Committee have not been verified by the Commission.

OREGON

"The Veterans' Administration loan program is wholly nondiscriminatory and has very probably reduced costs to some veterans of all races, but has had no effect upon residential patterns."

The Federal Highway Program

At the Commission's housing hearings witnesses stressed that the Federal highway program was displacing many Negro families in urban areas who were having difficulty finding new homes.[50] In Chicago, clearance of expressway routes resulted in the displacement of 9,444 families or about 31 percent of the city's total relocation volume during the period 1948–58.[51] Unlike the Federal urban renewal program which requires the provision of decent, safe, and sanitary housing for every displaced family and assists financially in achieving this, the Federal highway program, authorized by the Highway Act of 1956, sets no requirements and makes no provisions for displaced families.

The Interstate highway program is said to be "the greatest public works program in history." [52] Planned on a 13-year completion basis, it was estimated as of July 1, 1956, that the total cost of the work remaining was $39.5 billions, of which 90 percent will be paid to the States by the Federal Government. Approximately 4,500 miles of

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notify the VA regional office of the facts of the case. The regional office will decide whether to terminate or continue its refusal to appraise. The decision will be on the basis of the facts available to the regional office including the detriment or loss suffered by the veteran and the action which has been taken by the builder to remedy or correct this aspect of the matter."

[50] Regional Hearings, pp. 284, 496, 523.

[51] *Id.* at 701, 715–716.

[52] The administration of Federal Aid for Highways, Bureau of Public Roads, Department of Commerce, January 1957, p. 2.

urban roads are included in the program at an estimated cost of $17.2 billions.

In order to receive Federal aid, a State must submit a general plan to the Bureau of Public Roads showing where it proposes to run these roads, and how they will fit into the interstate highway plan. Once the plan is approved, the State must hold a public hearing. The Bureau of Public Roads further requires that notice of this hearing be properly publicized, and that the hearing be held in a reasonable location, so that those to be affected by the program will have an opportunity to attend and present their views.

Undoubtedly in urban areas the location of expressways can have an effect on the racial housing problem. To what extent, if at all, racial considerations have entered into road planning by the States and cities the Commission is not in a position to say. In Atlanta it was alleged that certain roads have been used as racial residential buffers.[53] In Birmingham, Ala., Negro citizens told Commission staff representatives that a new federally aided highway was scheduled to be routed through one of the city's few areas of middle and upper income Negro homes when it could just as easily go through a nearby slum.

As for the problem of relocating persons displaced by the highway program, the 1956 Highway Act contains no provisions relating directly or indirectly to the problem. Nor does the Bureau of Public Roads require any statement from the States indicating how they intend to relocate displaced persons or whether such persons have been satisfactorily relocated. Furthermore, in determining the costs of a State's participation in the program, the Bureau will not permit the State to include any amounts which it might pay in relocating displaced families. It takes the position that since Congress did not legislate on this matter, it should be handled on a State and local basis.

Specific proposals for congressional action to provide for Federal aid and assistance in relocating families displaced by the Federal highway program were made to the Commission in its Atlanta hearing. It was proposed that the Federal Aid Highway Act of 1956 be amended to provide for (1) relocation payments to individuals or families and business concerns; (2) funds for advance surveys and planning to determine the scope of the relocation problems created by federally aided highway projects; and (3) administration of the relocation program by the Housing and Home Finance Administrator. Also an amendment was proposed to the National Housing Act to make available to families displaced by the highway programs the aid of the sections 220 and 221 housing programs administered by

[53] Regional Hearings, p. 551. See also pp. 554–55.

the FHA in urban areas where there are no urban renewal "working programs." [54]

State Advisory Committee Reports

Only two of the Commission's State Advisory Committees commented on the effect of the Federal highway program on housing. The facts, statistics, and opinions in the following excerpts have not been verified by the Commission.

MINNESOTA

Highway and freeway condemnation falls heaviest on minority groups and tends to intensify their housing problems.

OHIO

Columbus

The Highway Act of 1956 focused attention on the vast relocation problems facing the city of Columbus, and caused the formation by the City Council of a Family Relocation Office in the Department of Slum Clearance and Rehabilitation.

SUGGESTIONS ON FEDERAL POLICY FROM STATE ADVISORY COMMITTEES

A number of the Commission's State Advisory Committees made recommendations on Federal housing policies. The opinions in the following excerpts are those of the State Committees.

ALASKA

"Encourage widespread use of the Block Statistics program offered by the Housing and Home Finance Agency in connection with the 1960 census. This program will help provide detailed information not now available in regard to minority group living patterns, economic patterns and substandard living information.

"The Urban Renewal program should be expanded and speeded up without delay to help meet problems of rapid growth in Alaskan cities."

CALIFORNIA

"We recommend that the Commission investigate all Federal-sponsored finance companies as to whether any discrimination has been practiced in the lending of money to purchase homes or the construction of housing units."

COLORADO

"We recommend that as a policy, local, State, and Federal, any housing that receives Federal aid be available to anyone on the same basis without regard to race, color, or creed."

GEORGIA

"It might be valuable for the Federal housing agencies to survey not only housing and slum clearance needs on the basis of race, but to tabulate the costs, returns, rate or vacancies, rent losses, and relative quality of maintenance of units in public housing projects on a racial basis.

"Federal legislation providing for lower downpayment requirements in minority housing in certain areas might be helpful with perhaps additional pro-

[54] *Id.* at 526, 531.

tection for the lender in such circumstances. * * * Perhaps even a method of federally guaranteeing loans to developers who open minority housing land, to help them install streets and utilities would be a contribution to the solution."

Maryland

The Maryland State Advisory Committee adopted the recommendations of the Commission on Race and Housing which appear on pages 68–71 of the Regional Hearings.

Missouri

Recommendations

"1. The Federal Government should declare its policy of a decent home and suitable living environment for every American family in a free and open housing market.

"2. Where Federal assistance is used, all housing should be available to all persons without regard to race, creed, color, or national origin.

"3. All Federal agencies charged with administering Federal assistance should assume the responsibility not only to adopt a policy of nondiscrimination, but to take such action as is necessary to enforce such policy.

"4. Contracts for Federal assistance between agencies of the Federal Government and developers, builders, and lenders, and public agencies should include nondiscrimination clauses with respect to sale, resale, lease and occupancy of the dwellings. Such provisions should have the same force and effect as other provisions of the contracts, and Federal agencies must recognize their responsibility to employ adequate manpower to obtain compliance with such provisions.

"5. Federal agencies should employ an adequate number of technical assistants who will be available for assistance to communities, investors, planning agencies, builders, and sellers in the early planning stages and through the program.

"6. The Commission on Civil Rights should be made a permanent agency of the Federal Government with powers and functions to include additional responsibilities in the field of housing. If this cannot be done, the President should appoint a Committee, similar to the President's Committee on Government Contracts, to assure that benefits of all Federal housing laws are available to all persons on the same conditions and without regard to race, creed, or color."

New Jersey

"This Committee would recommend that every possible attempt be made to enact Federal legislation which would make discrimination in publicly assisted housing illegal."

New York

To supplement the State laws the New York committee recommends:

"1. That the United States Government establish a commission with the specific responsibility to develop a plan and program for the elimination of discrimination and segregation policies and practices of all Federal agencies engaged in housing, slum clearance, urban renewal, insuring, or lending functions related to housing. This commission should have the authority upon examining the rules, procedures of all Federal agencies performing functions relating to housing to set forth the necessary revisions and changes to bring these agencies in compliance with the policy of nondiscrimination and nonsegregation. Specifically, this commission should be authorized to establish programs and policies that would result in—

"(*a*) a specific requirement of nondiscrimination and nonsegregation in all public and publicly-assisted housing programs and urban renewal programs provided to localities, builders, sponsors, and others through the facilities of the Veterans Administration and all the Housing and Home Finance Agencies, such as PHA, FHA, and URA.

"(*b*) a specific requirement that all Federal loan agencies related to housing programs issue regulations requiring nondiscrimination and nonsegregation in the use of their facilities, funds, and other benefits.

"2. That all Federal agencies responsible for the administration of any phase of the Housing Act of 1949, as amended, be given a clear mandate that they are to immediately effectuate the plans, programs, and requirements of the Federal commission herein recommended.

"3. That all Federal housing agencies and other Federal agencies performing housing functions immediately and consistently give the fullest support to State and municipal agencies which are charged with the responsibilities of enforcing laws against discrimination in housing.

"4. That the Federal Government immediately issue and publicize a statement of policy embodying the objective set forth by Congress in the Federal Housing Act of 1949, and consistent with the Federal Constitution with respect to the equal rights of all American citizens without regard to their race, creed, color, or national origin.

"The testimony reveals further a serious lack of Federal provisions for housing accommodations for the large segment of the American population which fall within the income range between the level required for low-rent public housing and that required for the so-called middle-income housing program. This lack points to an urgent need for a supplemental program to provide upper low-income and low middle-income housing. This committee strongly recommends that this need be provided by congressional action which would expand existing Federal housing programs to provide housing accommodations for the large group of people within the income range. The committee is obliged to emphasize the fact, however, that no expansion of the existing housing program, nor the existing housing program itself, will meet the spirit and objectives of the National Housing Policy or carry out the obligations of the Federal Government as expressed by Congress if the Federal housing agencies continue to operate on the side of discrimination and segregation.

"It is the opinion of this committee that the Civil Rights Commission might well be the proper agency to be given the powers as outlined in our recommendations, provided that it is given the additional funds and staff to exercise these powers."

OHIO

"We request the Civil Rights Commission to consider the following suggestions and proposals:

"1. The issuance of an Executive order establishing a policy of nondiscrimination and nonsegregation in all Federal housing programs;

"2. Legislation by Congress to guarantee unrestricted access for all citizens, regardless of race, religion, or national origin, to *all* housing, assisted by the Federal Government;

"3. Expand the function of Urban Renewal Administration to make sure that contract terms relate to adequate provision for displaced families without segregation.

"4. The present Executive order requiring that before an FHA or G.I. loan is approved it must appear that there are no recorded restrictions denying oc-

cupancy or ownership to any citizen because of race, religion, or national origin, does not go far enough. After such financing has been arranged, it is not uncommon for those who have profited by the Federal assistance to themselves conspire, without entering such agreement formally of record and thereby to deny, limit, or restrict occupancy or ownership of the particular property and its environs based on race, creed, or national origin. Such voluntary agreements should be prohibited as to property which has been financed with Federal funds.

"5. Legislation which would encourage lending institutions, having a tie-in with the Federal Government (either through charters or insurance) to lend to all races, if certain objective criteria are met. Local ordinances should be enacted which would prevent discrimination in housing before any loans are granted for urban renewal. It is suggested that the 221 law be amended to eliminate the requirement for approval of the local government body, if such housing is to be built in the area surrounding the central city. Income limitations should be raised in public housing tenements. The Federal Government should take proper legislative action to insure open occupancy in housing programs.

"6. Strong moral suasion should be used by the Administration emphasizing the fact it is to the good, not only of the minority groups but of the whole Nation, to provide adequate housing for all people, regardless of race, creed, or national origin. We believe that aid can and should be given, as Congress has suggested, through public guarantees of housing built by private groups. In many cases these groups might be corporations not for profit.

"7. Congress should provide that the equality of opportunity of citizens to acquire or use real estate is one of the basic civil rights inherent in citizens of the United States, and that conspiracy to deny such can be punished or redressed in appropriate actions in the Federal district courts."

Pennsylvania

"The committee feels especially strong about the role the Federal Government can play in its loan-guarantee and insurance plan for available housing for both veterans and nonveterans. The Federal Housing Administration should exercise every power it has and such additional ones as can be obtained through legislation to achieve nondiscrimination in its program."

Rhode Island

"The advisory committee does suggest a Federal examination of the policies of agencies disbursing Government funds to builders and investors who adhere to discriminatory practices in the erection of houses and the selling of those homes. This examination is to include measures which would deny Federal funds to those who practice discrimination in spite of local laws or 'customs.'

"The Rhode Island Advisory Committee would further suggest the possibilities of a Federal program concerning the educational approaches that should and must accompany legislation."

Washington

"If the agencies of the Federal Government would use the not inconsiderable powers granted to them to enforce nondiscrimination provisions in contracts, some relief might be offered to those minority group home buyers who are otherwise qualified.

"It is the observation of this committee that although there are numerous wise provisions for nondiscrimination in the regulations of any Federal depart-

ments, these are overlooked or not enforced, and require the constant scrutiny and prodding of outside, objective agencies * * *"

STATE ADVISORY COMMITTEE CONFERENCE

At the National Conference of State Advisory Committees, former Gov. Charles A. Sprague of Oregon presented a synopsis of the findings and conclusions of the six housing roundtables. The following is an excerpt from that presentation:

"With respect to possible Federal legislation in this field, one section turned in a forthright synopsis of its position as follows:

" 'All agreed that the Federal Government has an obligation to enact, enforce, and implement by Executive order, nondiscriminatory administration of all housing and construction activities in the Nation wherein Federal funds are used or Federal guarantees for loans are extended.

" 'General agreement that either a permanent Federal agency or a staff service in the Federal executive branch be instituted to police practices in administering Federal financial aid relating to nondiscrimination in housing activities.

" 'General agreement was expressed that the Federal Government should be concerned about Federal practices and leave to the States that which is not touched by Federal aid in housing.

" 'General agreement that the possibility of enforcing nondiscriminatory public housing may result in some southern States abandoning the field of public housing should not deter in any way the implementing of nondiscrimination in all U.S. public housing.'

"At the conference of moderators of the several sections, the consensus of opinion was in accord with this statement, although it was noted that members of some sections felt that adoption of such a Federal policy would greatly retard housing developments under Federal aid."

CHAPTER V. BUSINESS AND PRIVATE PROGRAMS AND POLICIES

Though governmental participation is substantial and manysided, private enterprise remains the major factor in the complex partnership that plans and produces housing for almost 180 million Americans. And while laws play an important role in shaping housing patterns and policies, most decisions in this field are made through countless voluntary actions of individual citizens and private organizations.[1] Therefore, to appraise the role of Federal laws and policies it is necessary to understand the programs and policies of the housing industry and of some of the private groups working for equal opportunity in housing.

As before in this report, there are two main approaches toward equal opportunity that must be separately considered: (1) Improvement in the housing of minorities without necessarily changing present racial patterns, and (2) open occupancy housing.

1. Minority Housing

Atlanta is a good example of what can be done through private initiative to develop good housing in decent neighborhoods for Negroes (see above, pp. 419ff.). While city officials cooperated in providing public facilities for the Negro corridor into the outlying suburban land and in securing consent from adjacent white neighborhoods, the primary role was played by Negro real estate men, builders and lending institutions who purchased the land and constructed high quality homes. As one of the Negro business leaders responsible for this West Side Atlanta development testified, "If you have something, you can get something." [1a] There was general agreement that a key factor in the Atlanta situation was the existence of a number of successful Negro financial institutions with total assets of nearly $70 million.[2] This story of Negro self-help through establishment of Negro businesses and investment in land and housing goes back at least 40 years.[3]

Negroes can borrow money for housing and other purposes easier in Atlanta than in most areas in the United States, the Commission was told by Mr. Jesse Blayton, president of the Mutual Federal Savings

[1] In 1947 the Truman Committee stated flatly that "Discrimination in housing results primarily from business practices." (*To Secure These Rights*, Report of the President's Committee on Civil Rights, 1947, p. 67.)

[1a] Regional Hearings, p. 456.

[2] *Id.* at 503. The Atlanta Life Insurance Company ($49 million), Mutual Federal Savings and Loan Association ($10 million), Citizens Trust Company ($9 million). In Chicago, too, the Commission was informed that Negro savings and loan associations and life insurance companies played a major role in financing the expansion of Negro housing. *Id.* at 739, 749.

[3] *Id.* at 545.

& Loan Association. While Negro institutions cannot make all the loans needed by Negroes "they do point out that Negro trade is good," he said.[4] "Without our own financial institutions in all probability this would not have been accomplished," said the housing director of the Atlanta Urban League, Mr. Robert Thompson. Loans from these institutions "broke the ice," he said. "Subsequent to that, then the white lending institutions came in and made loans."[5]

A white business leader, Col. W. O. Du Vall, president of the Atlanta Savings & Loan Association, agreed that investment in Negro housing had become good business. "It is with pride that I tell you that we have loaned millions of dollars to colored people for the purchase and construction of homes," he told the Commission, adding that the record of these loans was "satisfactory" and that his institution would continue to seek this business.[7]

Encouraged by the Negro's efforts to secure better housing, a white developer, Mr. Morris Abram, built "Highpoint," a middle income rental project for 452 Negro families. The developer told the Commission about the initial skepticism in the white community about this project:

> It was widely felt that it would be a mistake to build 452 units of middle income housing to place upon the market at one time. Everyone admitted that on the income side the potential demand was present in the Negro community, but most people felt that the desire phase of demand was simply not sufficient in the Negro community to justify a middle income project of this magnitude.[8]

But he and his codeveloper "had faith in the figures and in the predictions of the Atlanta Urban League, and we proceeded on that faith which has been justified."[9]

From the story of Highpoint and from the Commission's other studies of the problems of building minority housing these facts emerge. There is a considerable untapped market for better Negro housing, and yet there are special difficulties about this market that must be recognized. Mr. Abram testified that "the Negro did not queue up to apply for Highpoint Apartments, though they were among the first available middle income or middle class apartments in the community." Mr. Abram suggested the reasons for this slowness to respond to a new opportunity: Since Negro housing had been for the most part limited to less desirable neighborhoods, living in such a neighborhood has carried no social disability and imposed no social stigma in the Negro community. Not until recently has there been social pressure to force the middle income Negro family into a middle class setting.[10]

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[4] *Id.* at 501.

[5] *Id.* at 527. See also testimony of Mr. T. M. Alexander, Sr., *id* at 456.

[7] *Id.* at 519, 520. See also the statement in accord of a leading white Atlanta real estate man, Mr. John O. Chiles. (*Id.* at 496–97).

[8] *Id.* at 569.

[9] *Ibid.*

[10] *Ibid.*

Mr. Abram suggested further that public housing projects in Atlanta had contributed to the subsequent success of middle income Negro housing. About one-fourth of the occupants of Highpoint were "graduates of public housing projects." These projects he said had

> Given families a taste of what it is to live in a substantial dwelling, and the wife, having been accustomed to it, usually refuses to go back to the slum.

He stated that—

> Most of the persons who are living in substandard housing at this date * * * need the additional educational advantages and stimulus of public housing as a prelude to standard private housing experience.[11]

The Atlanta experience is in line with the considerable statistical evidence indicating the growing market of Negro home purchasers. The 1955 report of the Mortgage Bankers Association's Committee on Financing Minority Housing gave some of the vital statistics:

> Between 1940 and 1950 the number of nonwhite families earning between $3,000 and $5,000 increased over 30 times while the number earning over $5,000 increased over 50 times. Never before in so short a period has such a phenomenon been witnessed. The result has been the introduction of numerous nonwhite families into a new economic state where desires are both stimulated and made effective. Since 1950 the same trend, at perhaps a somewhat less spectacular rate, has continued. The nonwhite part of the population is thus rapidly becoming an integral part of the general market for all types of goods and services.[12]

In 1957 it was estimated that some 26 percent of nonwhite families residing in urban areas had incomes above $5,000 a year.[13] In Chicago, it was estimated that in 1956 there was a market of 45,000 nonwhite families for middle and upper income housing.[14] Market surveys by the Federal Housing Administration concluded that nonwhites are able and willing "to increase materially their expenditures for better housing" but that "private enterprise has done relatively little to make new housing available to these families." [15]

In 1954 the National Association of Home Builders announced a program to build 150,000 dwelling units annually for minority groups. Each local builders' association throughout the country was urged to adopt a community goal and "start an aggressive campaign and effective production program to improve the housing conditions of minority groups in their own community." [16]

Negro spokesmen generally opposed this program for "minority housing." "We do not want jim-crow dwellings whether they are

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[11] *Id.* at 570.
[12] *Id.* at 77.
[13] Washington Hearing, p. 14.
[14] Regional Hearings, p. 623.
[15] See FHA Studies, "The Nonwhite Market," Washington hearing, pp. 171–175, and "Observations on the Minority-group Market," *id.* at 187–191.
[16] National Association of Homebuilders, "Housing for Minority Groups" (1954).

new or old," the annual conference of the NAACP resolved, adding specifically:

> We condemn and oppose the policy advocated by the National Association of Home Builders for planned housing developments directed toward any specific minority group on the basis of race, color, national origin, or religion.[17]

The National Urban League also announced that it was "opposed to, and unwilling to support or assist in the construction of segregated privately financed housing." [18]

Whether because of this outside opposition or because of indifference inside the home building industry or for other reasons suggested below the National Association of Home Builders' program for minority housing has apparently come to nothing. No further goals have been set and no announcements have been made about the results of the 1954 resolution.[19]

Most private construction of new housing for Negroes has taken place in the South, where many Negro leaders have gone along with the concept of "minority housing," and where the obstacles to such housing appear to be less. One of the chief obstacles is finding a good site. In the South it has been easier to locate Negro developments outside the central city area of Negro concentration in part because Negroes have traditionally lived in rural settlements whereas in northern and western cities solid white communities resist such "intrusions." Atlanta is not the only example where good outlying land in southern cities has been made available to Negroes. In New Orleans, city officials approved a large Negro development in one of the best remaining sites for residential land.[20] In Houston, too, good land for Negro expansion has been made available. In some other southern cities, such as Montgomery, Ala., the northern pattern of a solid ring of white suburbs is taking hold and good new land for Negro housing is becoming almost impossible to find.[21]

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[17] National Association for the Advancement of Colored People, Annual Conference Resolutions, 1954, 1955, and 1956.

[18] Statement and Recommendation from the Board Convention of the National Urban League, April 15–17, 1955.

[19] Regional Hearings, p. 887. In Chicago the only group that did not respond to the Commission's invitation to testify was the Home Buildings Association of Chicago. In New York the past-president of the State Home Builders Association did testify and in response to questioning stated:

"The national association has maintained for a period of years a Minority Housing Committee, and then it became sort of merged into an Urban Renewal Committee, which was initially designed to study and prepare the way for providing housing accommodations for minorities. The practical results of this committee's activities have dotted themselves in certain small areas around the country. They haven't had enough volume to represent a real practical movement, but they are going in the right direction." (*Id.* at 277).

[20] Pontchartrain Park Homes outside New Orleans is one of the largest Negro housing projects in the Nation. Completed in 1955, it is a well-planned community of 1,000 homes ranging in price from $9,725 to $30,000. A large park, swimming pool, and golf course is at the center.

[21] *House and Home,* April 1955, p. 206. "Land is by every yardstick the hard core of the problem," states Dr. George Snowden, Assistant to the Commissioner of FHA for Intergroup Relations, Before Conference of Mortgage Bankers Association, Chicago, 1954.

Another obstacle to Negro housing is difficulty in financing. "Probably the greatest single limiting factor in all markets has been the lack of mortgage credit for nonwhite buyers," states the 1955 Housing Almanac of the National Association of Home Builders (p. 40).[22]

The FHA survey of the nonwhite market concludes that the scarcity of loan money and relatively high rates charged Negroes "stem more from lack of experience on the part of lenders than from unfavorable experience."[23] Even in Atlanta, however, after considerable favorable experience, mortgage credit for Negro housing appeared to be more difficult to get than for white housing after the mortgage market got tight in 1956. The president of the Negro real estate board testified that during this period:

> The white loans came first, and the Negroes didn't get any from the white institutions. If we hadn't had some colored ones here, we would have had to close doors.[24]

Certainly one reason for some of the difficulty in financing Negro housing is the problem of finding Negroes who meet standard credit tests. The Executive Vice President of the corporation that built Pontchartrain Park Homes in New Orleans explained the relatively slow rate of sales by "the difficulty of qualifying buyers." He said that, "Despite the most careful advance screening, we have had to make five gross sales to come out with three net sales."[25]

Another obstacle to financing is the recurring problem of sites. Since sites for Negro housing are generally limited to areas of Negro concentration which also are usually slums, blighted, or deteriorating, the lending institutions take a dim view of the property in terms of a residential development. A large portion of slum areas, according to one expert witness in Chicago, are simply not available for financing.[26]

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[23] See also testimony of General Andrews for the Real Estate Board of New York about the difficulty in getting mortgages on Negro-occupied dwelling units. (Regional hearings, p. 237). He noted that "where one has the so-called minority occupancy one runs the very grave danger of having the fire and casualty companies refuse to carry the risk any longer, and then one is faced with considerable difficulty in getting adequate coverage, insurance coverage * * *." (*Ibid.*) The Commission heard testimony in Chicago that Negro-occupied sections of the South Side and West Side have been marked 'off limits' by 285 of the 310 casualty and fire insurance companies operating in the State of Illinois," with consequent rates from the remaining companies far above those in white sections (*id.* at 740).

[24] Washington Hearing, p. 190, item 16.

[24] *Id.* at 548. A survey covering real estate transfers in Cook County during the 12 months preceding the Commission's hearing in May 1959 showed "that not even a token number of conventional mortgages were made for the typical Negro home buyer by the 141 commercial banks and the 229 life insurance companies operating in Greater Chicago." Mr. Dempsey Travis, spokesman for Negro real estate brokers in Chicago, said that "This lack of interest in the Negro mortgagor is hard to conceive in the light of two recent industry estimates that place seven-tenths of the Negro savings in commercial banks and nineteen-twentieths of their life insurance in white-controlled companies." (*Id.* at 739.)

[25] Morgan G. Earnest, "Selling the Minority Buyer," NAHB Correlator 10 (10), October 1956, pp. 100–103.

[26] Regional Hearings, p. 728. In New York a developer, Mr. James Scheuer, testified that "a good property in Harlem is much more difficult to finance than a good property

The future for minority housing projects is unpredictable. After consulting nearly 200 builders throughout the country, the Research Director of the Commission on Race and Housing, Dr. Davis McEntire, reports that the testimony of these builders is remarkably consistent: building for minorities nearly always involves the builder in problems and difficulties greater than he normally expects in operations directed to the white market exclusively. Generally, good building sites are scarcer, financing is more difficult to obtain and more costly, and the market is "thinner" and less dependable.[27]

Moreover, there are the objections on principle of many Negroes, particularly in the North and West, to housing developments for Negroes that may become the racial ghettoes of the future.

On the other hand, the need for better housing for Negroes both in present Negro areas and in new locations is great. The construction of such new housing for Negroes at least increases the range of choice of Negro home-seekers by increasing the total housing supply. It also promotes the conditions under which equality of opportunity in housing can best be advanced. By demonstrating that Negroes want higher-standard new housing, that they can afford it, that they repay their loans, and that they keep their homes and their new neighborhoods in good condition and do not lower property values, such "minority housing" projects can serve to convince the white majority in local communities and in the housing industry that their present fears are not justified.

This is what is happening in Atlanta where the beautiful Negro suburbs have added to the city's beauty and greatly impressed the whites.[28] A generation of young Negroes is growing up accustomed to decent housing in good neighborhoods. The result is to bring Atlanta a step nearer to freedom of choice and equality of opportunity in housing.

2. Open Occupancy Housing

In its New York and Chicago hearings the Commission heard considerable testimony about successful housing projects open to all races.

Jackie Robinson testified as a director of Modern Community Developers, Inc., a private corporation established to promote and to assist in the planning and financing of open occupancy projects throughout the country.[29] It is led by Morris Milgram, a developer

in Larchmont." He pointed out that lending institutions properly "take into consideration the conditions around a home, the conditions of the neighborhood, and whether that neighborhood is stable and attractive, and it is on those grounds that it is difficult to finance housing in areas of dense minority concentration because those areas are slums and no prudent banker would invest his money in a slum."

[27] Information supplied by Dr. Davis McEntire, Research Director, Commission on Race and Housing.

[28] Regional Hearings, pp. 444, 452, 520.

[29] *Id.* at 270–272. Modern Community Developers, Inc., 84 Nassau Street, Princeton, N.J.

responsible for two open occupancy communities in the Philadelphia area. The first, Concord Park Homes, consists of 139 rambler-type homes in the $12,000–$16,000 range, 75 of which are occupied by white families and 64 by Negro. The second, Greenbelt Knoll, is a higher priced, smaller development of modern-architecture homes in the $20,000–$38,000 range. Mr. Milgram lives in one of the 19 homes; of the others, 6 are owned by Negroes, 12 by whites. Both are successful. Following these, Mr. Milgram has built two open occupancy projects in or near Princeton, N.J. So far Mr. Milgram's projects have brought a 6 percent return on their investment.[30] Members of the Commission staff have visited several of these projects and talked with some of the residents.

One interesting feature is that Mr. Milgram has found it advisable to adopt a quota on the proportion of Negroes in his projects in order to assure an adequate level of white occupants. By contractual agreements through which the developer has first option on homes for sale this quota is maintained and the residents are secure in the knowledge that the projects will not become predominantly Negro.[31]

In New York, the Commission also heard about the 16 nonprofit, cooperative-sponsored housing projects in the city providing dwelling units for over 10,000 middle-income families (in the $4,000 to $7,000 bracket) on a nondiscriminatory basis. The president of the New York City Central Labor Council, AFL–CIO, Mr. Harry Van Arsdale, Jr., speaking as a director of the United Housing Foundation that sponsors these cooperatives, testified that, "Today more families live under open-occupancy conditions in the nonprofit-sponsored cooperatives than in all other types of private housing combined." [32]

In Chicago the Commission heard about two other private open occupancy projects that appear to be succeeding contrary to most expectations. Although located in what was formerly a Negro slum, they have attracted a growing ratio of white tenants because of the excellence of the location and the high quality of the apartments with relatively low rents. The first of these, Lake Meadows, contains 2,040 units in 9 buildings, and a modern shopping center with 30 shops, including a department store and bank. The sponsor, the New York Life Insurance Company, originally expected it to be essentially a Negro development but was pleased and surprised to discover that it could draw white applicants. The first group of buildings are occupied by Negroes. In the second group, however, 30 percent of the tenants are white. Directly to the north and adjacent to the New York Life project are the Prairie Shores Apartments, a private re-

[30] *Ibid.*

[31] *Ibid.* See discussion of the "Benign Quota," Note, 107 U. Penn. L. Rev. 538–550 (1959).

[32] *Id.* at 312.

development project also built on land cleared through the urban renewal program. When completed it will contain approximately 1,500 units in 5 buildings. In its first building the racial ratio is 75 percent white, 25 percent Negro.[33]

These projects have created an interracial island of middle-income families in a sea of low-income Negroes. Contrary to the usual trend in Negro-majority developments, the proportion of white tenancy has been increasing. According to the managers of the Prairie Shores project, this open occupancy pattern was not the result of any quota but of the manner in which leasing operations were conducted. Through widespread advertising the managers were able to select the tenants from a large group of applicants. They deliberately selected tenants above average in education with the great majority having received a college degree. The Negro tenants, almost without exception, have received or are working toward college degrees and for the most part are engaged in business and professional occupations.[34]

"The primary controls involved are not quotas on persons but rather controls on the environment," testified Chicago's Commissioner of City Planning, Mr. Ira Bach, who considers that these two South Side projects may be demonstrating one of the major social byproducts of the urban renewal program.[35] These isolated examples of open occupancy projects may be indicative of what will happen on a wider scale in the future.[36] It is important to note that they are *new* housing projects of high quality where all of the people involved knew that there would be an interracial occupancy pattern.[37] It was the mutual choice of those concerned. The existence of such projects is thus increasing the range of freedom of choice in housing.

* * *

However, a much more difficult situation is encountered where Negroes purchase or rent existing dwelling units in already established white projects or neighborhoods. Property values may decline, at least temporarily, when a Negro moves into a white neighborhood or apartment and white residents still unwilling to sell or rent to Negroes, begin to leave. This decline in property values is not likely to happen in outlying areas or in large established apartments where there is no direct threat of "inundation" from an adjacent area of Negro concentration. Negro tenants now occupy dwelling units in

[33] *Id.* at 761–764, 735.
[34] *Id.* at 674, 761, 763.
[35] *Id.* at 674.
[36] Grier, Eunice and George, *Privately Developed Interracial Housing, An Analysis of Experience,* Special Research Report to the Commission on Race and Housing, January 1959.
[37] See other discussion on these projects, *supra* pp. 440, 442.

some of the formerly all-white housing developments of the Metropolitan Life Insurance Company in New York. Mr. Frank Lowe, Metropolitan's Vice President for housing, testified that "Our tenants apparently are satisfied. * * * On the basis of our experience to date, this policy of nondiscrimination has created no unusual problems, tensions, or difficulties." [38]

Despite such evidence, property owners, builders, real estate agents and lending institutions in most sections of the country offer considerable resistance to any Negro moving into an existing white neighborhood. In Chicago this was called a "Gentlemen's Agreement." [39] A Negro will generally not be considered for a loan by a white institution unless there are already a certain number of nonwhites residing in the immediate vicinity.[40] The President of the Chicago Mortgage Bankers Association, Mr. Edward Asmus, testified that:

> Mortgage lenders might be subject to nullification if they are the ones who start a movement into a community. Furthermore, there is a danger of damage to the property which no lender wants to be involved in.[41]

The white real estate broker is subject to more pressures than the large lending institutions and is even more likely to hold the line against the entrance of Negroes in an existing white neighborhood. Until 1950 the Code of Ethics of the National Association of Real Estate Boards (NAREB) provided that:

> A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood. (Art. 34.)

The new Article 5 adopted in 1950, which omitted any reference to race, reads:

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[38] *Id.* at 263. See Laurenti, *Effects of Nonwhite Purchases on Market Prices of Residences* (1952); Morgan, *Values in Transition Areas; Some New Concepts* (1956). See also later and more comprehensive but still unpublished study by Laurenti, *Property Values and Race: Studies in Seven Cities,* Special Research Report to the Commission on Race and Housing, December 1958.

[39] Regional Hearings, pp. 746, 884.

[40] *Id.* at 739, 746, 793, 832–833. George Harris, president of the National Association of Real Estate Brokers, testified that a Negro will not get a loan "if there are less than three to five nonwhites in any given block." He listed 12 States where this was the prevailing practice, according to studies of his organization. Mr. Dempsey Travis, President of the Dearborn Real Estate Board, testified that a study by his organization showed that out of the 241 white-operated savings and loan associations in Cook County "we could find only one who made an initial mortgage to a Negro family in an all-white area within the past year." See also the similar testimony of the spokesman for the Church Federation of Greater Chicago and for the Catholic Interracial Council of Chicago.

[41] *Id.* at 758. The President of the Atlanta Federal Savings and Loan Association, Col. W. O. Du Vall testified: "My institution has a policy that does not invite, does not make any loans on property located in an area where there is racially mixed housing" (*id.* at 519). Mr. Schwulst, president of the Bowery Savings Bank in New York, testified that the Commission on Race and Housing had found that opposition to the entrance of nonwhites in white areas was the rule throughout the country for both lenders and brokers (*id.* at 35).

A Realtor should not be instrumental in introducing into a neighborhood a character of property or use which will clearly be detrimental to property values in that neighborhood.[42]

Local practice, however, remains in Chicago and in most cities not to "introduce" Negroes into existing white areas.[43] While spokesmen for the white real estate boards stress that they are only "agents of the seller-owner" and "no other than a reflection . . . of the client" and are not "called in to change attitudes," [44] it appears that they in fact play an influential role in setting housing policies and patterns.[45] There was testimony in Chicago that "there are in our city many white owners who deplore our pattern of segregation and would like to sell their own property in a manner to break it up" but can find no white real estate agent who will cooperate. The Commission was further told that the few brokers who violate the agreement:

are suddenly hit by insurance cancellations, rigid building code enforcement, sudden, fierce competition for their listings, and even social ostracism. Behind all this is an efficient . . . information gathering system that reduces to a bare minimum the possibility of sneak sales, or even private sales to nonwhites. Most such sales are known to the industry while they are in progress, and their completion interfered with in every way possible.[46]

The strongest indication that the white real estate boards generally are exerting their influence against equal opportunity for Negroes in housing rather than simply honoring the wishes of their principals is their refusal in Chicago, Atlanta and most cities to admit qualified Negro real-estate brokers to membership. "This restriction symbolizes the denial of a free housing market for the Negro buyer, renter, and broker," said the president of the Dearborn Real Estate Board, the Negro realtors association in Chicago.[47]

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[42] An editor's comment in the official newsletter of the NAREB notes that: " 'Character' or 'use' does not include 'occupancy.' The word was stricken from this article several years ago to conform to public policy as set forth by opinions of the U.S. Supreme Court. While 'use' refers to the employment of property, i.e., residential, commercial, industrial use, etc., and illegal or otherwise objectionable use, 'occupancy' refers to the inhabitation of the property. Thus, while the qualities of the property and its utilization are subject to the provisions of this article, any question as to its inhabitation is subject only to local determination in accordance with local practice." *Realtor's Headlines*, Oct. 27, 1958.

[43] Regional Hearings, pp. 395–396, 404.

[44] *Id.* at 234–235, 737.

[45] The Commission heard testimony that real estate brokers were often a "major force" in the establishment and maintenance of residential restrictions against Jews. (*Id.* at 395, 396, 404.)

[46] *Id.* at 884. See also 738.

[47] *Id.* at 788. See also 539, 738, 745. The Real Estate Board of New York does admit Negroes (*id.* at 245). The president of the Real Estate Board of Chicago would give no answer to Commissioner Hesburgh's question: "if there is any real reason, apart from prejudice, why Negro Americans are not allowed on the Chicago Real Estate Board." (*Id.* at 748). Because of the restrictions on Negroes, the Negro real estate brokers play a major role in finding homes to purchase and arranging for financing, yet they are left out of most of the policymaking in all levels of the housing industry. (*Id.* at 745.)

The lack of a free housing market is shown in other ways. The vice president of the Cook County Industrial Union Council, Mr. Ralph D. Robinson, representing 250,000 members, testified that:

> The "gentlemen's agreement" has to date effectively prevented the construction in this city of labor-sponsored housing projects. The Cook County Industrial Union Council several years ago sought to secure a site for construction of nonsegregated housing, but insisted that the site not be in an all-Negro neighborhood. It has to date failed to secure such a site. We are aware that a number of international unions, which have contributed to the welfare of cities such as New York by building good housing for middle income people, have made official and unofficial inquiry in Chicago and have failed to find acceptable sites in our city for nonsegregated housing.[48]

While "blockbusting" into white neighborhoods may be viewed as "pioneering" by the Negro who sees it as the primary method of increasing his housing opportunities, white residents naturally take another view of the process. Once an area is designated as "in transition" a white resident or would-be white resident often has as much difficulty securing financing as a Negro. This lack of available mortgage financing is said to be "one of the largest factors producing lower selling prices that whites experience when Negroes move into a community."[49] This is another aspect of the gentlemen's agreement against introducing Negroes in non-Negro areas: once Negroes are introduced in such a neighborhood the generally prevailing policy then works against the white resident who chooses to stay or to move into the area.[50]

The statement of the Chicago Commission on Human Relations described how this whole process works:

> In many white areas adjacent to the Negro community the process of deterioration begins even before the first Negro moves in. The uncertainty about the area's future which pervades a community because of the prospect of change slows investment and maintenance to a standstill. Buyers and renters, white ones, are hard to come by. Rents and sale prices are lowered in order to attract whites. With lower rents apartment maintenance is reduced. The marginal and transient people willing to rent in this situation begin to change the character of the community. Eventually pressure from apartment vacancies, or the need to sell, leads to the introduction of Negroes or else they are introduced by unscrupulous dealers who hope to make a profit from handling transfers which will result from the panic.
>
> When the first Negroes come in, so do speculators and solicitors. The community lack of confidence in its own future is mirrored in the money market. The only people with cash to finance transfers made possible by panic are real estate speculators. Many speculators help create the panic.[51]

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[48] *Id.* at 884.

[49] *Id.* at 684.

[50] *Id.* at 224–225. In Springfield Gardens in New York, where the community organization decided to try to stabilize the area on an interracial basis, one of the difficulties it encountered was that banks in valuing the property or the credit of a white person seeking a loan would refuse a mortgage in the transition area, but if the same person moved some blocks away into an all-white area he would get a mortgage.

[51] *Id.* at 684, 804–805.

The spokesman for Negro realtors in Chicago, Mr. Dempsey Travis, described this stage in the process:

> After the first five Negro families have moved into a block, a "gold rush" type atmosphere is created by a large number of white and Negro brokers converging on this one block to list the other available buildings. The brokers cannot be blamed because the block pattern has limited their market. On the other hand, many a white seller has been frightened by this avalanche of sales people and has sold his property in haste at a great loss.[52]

But the story does not end with the damage to the former white residents. The statement of the Chicago Commission describes the next sorry phase:

> When properties are resold to Negroes * * * the picture changes. Prices are often double what the speculator paid the fleeing white family. The inflated prices paid by Negroes in transitional communities is a further cause of deterioration. In one case which came to our attention the monthly payments made by a Negro are twice what the monthly income of the building used to be when it was white occupied. * * * The Negro who buys on such terms is going to have to abuse his property in some way to meet this financial burden. The effect on those whites who witness the abuse, be it overcrowding, poor maintenance, or illegal conversion, is to make them more willing to sell to the next solicitor and to accept uncritically the idea that communities deteriorate when Negroes move in.[53]

Nor is this the whole story. Walking through these transition areas, according to the Chicago Commission one sees some homes "sinking rapidly into decay" and "others with neat lawns, freshly painted window frames, new stairways and sidings."

> Almost certainly the most deteriorated structures would be those bought on contract from a speculator. * * * Where homes have been reasonably priced and with fair financing terms, the improvement with the arrival of Negroes is extraordinary.[54]

But are private industry and private citizens drawing the necessary conclusions from all this?

At issue in this field of private and business policies, it should be reemphasized, is not whether open occupancy should be imposed on anyone but whether those who want to live in such neighborhoods or housing developments should have that choice and whether those who want to dispose of their property without racial discrimination should be permitted to do so. Again it is the question of the freedom of choice.

There are two different sides of the problem: (1) Negroes moving into a white area on the edge of an overcrowded Negro area and (2) Negroes moving into outlying white areas not threatened with Negro "inundation".

There may be an understandable basis for community lending institutions and real-estate agents hesitating to "introduce" Negroes into

[52] *Id.* at 739–740.
[53] *Id.* at 685. See also 740.
[54] *Id.* at 685.

a neighborhood that would then probably become a so-called "transition area." Both white residents in these areas and Negroes in need of more and better housing have a legitimate interest in finding some better method of opening up new opportunities for housing than blockbusting.

But Negroes purchasing or renting homes in outlying middle-income or upper-income areas is a different matter. Only a relatively small number of Negroes can afford such housing and a lesser number would choose to live so separated from the main centers of the Negro community. Yet white hostility to a solitary Negro professional man who chose to live in the Chicago suburb of Oak Park led to the desecration of the home of this distinguished scientist.[55]

The statement of Archbishop Meyer of Chicago stressed that "it is the restrictions against the most capable and self-reliant portions of the Negro population which call the loudest for remedy and which must be rectified most speedily." [56]

It should be relatively easy in outlying white areas to absorb a number of Negroes whose social standards are comparable to those of the white inhabitants. The symbolic effect of doing this even on a small scale might be considerable. Opening such opportunities would help to relieve the Negro's sense of confinement.

This, of course, would not by itself solve the problem of the overcrowded expanding Negro area and the adjacent white neighborhoods.

The statement of Archbishop Meyer vividly described this vicious circle:

> The first Negroes to move into many of these once white communities were people whose last thought was to drive the original inhabitants away. In many cases the first Negroes to arrive were individuals who wanted to leave the old ethnic community because they thought, and were right in so thinking, that they had much more in common with the people into whose neighborhoods they were moving. Nevertheless the old inhabitants vanished. Worse yet, there have been occasional outbreaks of violence.
>
> In some communities where white people lived a short time ago, instead of organization for constructive purposes, there was rumor, myth, and eventually fear finally giving way to panic. * * * [57]

Thus, he said, "the forebodings of the white population came true in a number of instances because they made them come true. By predicting the worst, the worst came to pass." He added:

> Had there been cooperation between individuals, between churches, between business institutions; had there been planning, had there been constructive programming of many different kinds, we believe that many communities could have been stabilized so that a truly free market would have been created. A free market would have permitted the entrance into white middle class communities of a proportion of Negro families who could only be considered an asset in any neighborhood.[58]

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[55] *Id.* at 747.
[56] *Id.* at 803.
[57] *Id.* at 803–804.
[58] *Id.* at 805.

Archbishop Meyer suggested no simple solution. He recommended a simultaneous dual program: First, to eliminate the housing shortage for Negroes; second, to provide opportunities for Negroes to choose housing in new areas throughout the city and suburbs "but not to the degree that we merely extend the boundaries of the racial ghetto." To thus become "masters of the trends of the time, rather than allow circumstances to master them," communities must organize their human and material resources. For this, he said, "It will be necessary for representative interests to discover how they can plan, work and meet the future together." He called for such concerted action by private citizens, businesses and industries, Catholic parishes, Protestant churches, and synagogues and temples. Together he believed they could "work out a variety of forms of local cooperation in order to stabilize the populations, to control and guide conservation and development, and to make sure Negroes of like economic and social backgrounds do gain admission in a manner that is harmonious, and a credit to us as Christians and Americans." [59]

* * *

This survey of the role of private enterprise and voluntary citizens' action has included the problems of new housing projects *for* Negroes, of new housing projects on an open occupancy basis, and of opening more and better opportunities for Negroes in existing housing outside the present areas of concentration. The central difficulty underlying all these is what Mr. Schwulst, president of the Bowery Savings Bank, described as the "overriding finding" of the Commission on Race and Housing:

> * * * [H]ousing is apparently the only commodity in the American market which is not freely available to minority groups, and particularly not freely available to those minority groups who are nonwhite. These groups can go into the market and compete on equal terms with anybody else for practically every other commodity that is available for sale or for rent in the American market, but not with respect to housing.[60]

Industry witnesses indicated that they are concerned about their present failure to produce, supply, and finance housing on a free market basis for people of all races and on all levels of income. The spokesman for the New York State Association of Home Builders, Mr. Emil Keen, stated that:

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[59] *Id.* at 805–806. See also the similar testimony of Rabbi Richard Hirsch and of Dr. Alvin Pitcher of the Church Federation of Greater Chicago. (*Id.* at 791–92, 795, 813.) The president of the National Association of Negro Real Estate Brokers, Mr. George Harris, indicated that his group would be willing to join in such a concerted program and would even consider some such limitations and controls "irrespective of whether the word 'quota' is a distasteful word." He called on the mortgage bankers, the banks, the real estate boards, white and Negro, to "sit down together as men and discuss this question and see to it that we come up with something." (*Id.* at 747.)

[60] *Id.* at 32. See also 41.

* * * [U]nless we offer our product to all persons who can afford to pay for it on the terms in which it is being offered we violate one of the cardinal principles necessary for the survival of free enterprise.[61]

Although Mr. William Levitt declined to testify in the Commission's New York hearing because of ill health, he has expressed this concern in public testimony before Congress. After being asked whether private industry was furnishing homes to minority group members, Mr. Levitt replied in the following colloquy:

Mr. LEVITT. No; private industry is not. Someday I hope they will, and I hope we will be the leaders in it.

Mr. O'HARA. Now the houses you are building, are they open to all Americans?

Mr. LEVITT. Unfortunately, no.

Mr. O'HARA. They are entirely for the white people?

Mr. LEVITT. Yes, and I repeat, I hope someday that will not be so, and I hope we will be the ones who make it not so.[62]

Several leading industry witnesses proposed remedies. Mr. Schwulst emphasized the recommendation of the Commission on Race and Housing that "national and local associations of the housing industry * * * take the lead in effecting a concerted industrywide policy" to "open all housing developments to qualified buyers or tenants without regard to race, ethnic descent, or religion." Saying that "it is in the economic interest of the housing industry to broaden the market for housing and remove impediments to its functioning," Mr. Schwulst suggested that by acting in concert to this end individual builders who "conform to the principle of a free housing market" would not be under a competitive disadvantage. He urged builders, mortgage lenders and real estate brokers to "study the experience of financially successful interracial housing developments for helpful guidance." [63]

Mr. Keen stressed the need for such a study, saying that a concerted industrywide policy for equal opportunity in housing "can result only from conviction on the part of builders that such a path is, if not in their obvious economic self-interest, surely not to their economic detriment." He announced that as chairman of the Past Presidents' Council and of the Long Range Planning Committee of the New York State Home Builders Association, he was initiating such a study in New York State. However, Mr. Keen noted that so far "there are relatively few examples of financially successful interracial housing developments in our market area." Therefore, "to encourage builders to experiment in this relatively untried field" he proposed the designation of special assistance funds of the Federal National Mortgage

[61] *Id.* at 274.

[62] Hearings, investigation of housing, 1955, Subcommittee on Housing of the Committee on Banking and Currency, 84th Cong. 1st. sess., p. 415.

[63] Regional Hearings, p. 39.

Association for the purchase of mortgages at par on homes to be offered for open occupancy (see above, pp. 495–96).[64]

A large-scale developer in the urban renewal program, Mr. James Scheuer, president of the Citizens Housing and Planning Council of New York City, agreed that the key to producing lower cost housing available to nonwhites was a reduction in the costs of financing and that special public assistance was necessary for this. Mr. Scheuer proposed direct governmental loans for relocation-housing on the model of the Federal college housing program that provides cheap money at substantially the Government rate of borrowing. New York State had adopted such a program for limited-profit housing in the Mitchell-Lama Act, he noted.[65]

Mr. Schwulst stressed several other recommendations of the Commission on Race and Housing:

> (1) Mortgage credit should be extended to nonwhites in any location on the same terms as to other borrowers.
>
> (2) Real estate boards should "take the positive step of declaring that realtors should offer listed residential properties to any qualified purchaser or renter without regard to racial or religious distinction unless the principal has, in writing, directed limitation of a particular transaction to certain groups."
>
> (3) Trade associations of the housing industry, including real estate boards, mortgage banker associations, and builders' associations [should] drop color bars to membership and admit any qualified businessman without distinction of race, color, or creed.[66]

While all these proposals are directed toward the housing industry, the above three leaders of the industry emphasized the role of law and government in the complex partnership that makes housing possible for the American people.[67] While these men all favored laws and policies for equal opportunity in housing, what they primarily looked for was positive leadership. Although white businessmen and community spokesmen in Atlanta opposed a Federal antidiscrimination policy in housing on the ground that it would set back the necessary housing programs, most of them, like their counterparts in Chicago and New York, supported and relied upon the various programs of urban renewal, public housing, mortgage loan insurance, and assistance in securing mortgages for qualified minority-group home purchasers.[68]

What this suggests is that efforts toward equal opportunity in housing by private citizens and private enterprises need to be part of a concerted national effort in this direction.

In simpler times the relationship between governmental and private action seemed clear cut. Under the Federal Homestead Act of 1862—

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[64] *Id.* at 819–820, 276.
[65] *Id.* at 287–288. See also p. 741.
[66] *Id.* at 39.
[67] *Id.* at 38, 278–280, 286, 288, 289, 291–293.
[68] *Id.* at 446, 453, 457, 478.

a precursor to all programs of equal opportunity for housing—the Government offered 160 acres to any man who would clear the land and build his own farm and home. But in today's crowded industrial society the relationships in this as in other fields are so complicated that an Einstein is almost required to formulate them. The urban renewal program, with its intricate partnership between city, State, and Federal governments, and between all these and private developers, lending institutions, citizens' groups, tenants, and property owners, is an example of the complexity involved.

Each part of this complex would have great difficulty working for equality of opportunity without the cooperation of the other parts. The builder needs the support of the lender and real estate agents need the support of their customers and of city, State, and Federal officials, and the same is true of each factor. Certainly the Federal housing agencies need the support of the housing industry in efforts to secure equality of opportunity. The role of the law and of government must be to give the overall leadership required to meet the problem as a whole.

Such a partnership between business enterprise and government in order to meet the needs of the nation is not unusual, particularly in the 20th century. One of the leaders of the housing industry was asked a crucial question by a member of the Commission:

> In every other area of American life, in the production of automobiles, for example, or other consumer goods, we have somehow, through great business corporations, enterprise, been able to put out a product that is competitive and at a decent price and at some quality, and we have been able to do this mainly through private initiative and make it a businesslike venture as well as a good thing for the American people generally. I am wondering why this can work in so many other areas and cannot work in the housing area. Is there any hope for private initiative, somehow, in planning, initiative and imagination, in providing a breakthrough here?[69]

Mr. Keen, spokesman for the New York State Homebuilders, replied that the building industry can solve the problem of providing equal opportunity to decent housing for all Americans "provided that the same tools are made available to it as have been in the past made available to other industries."

He added:

> Special tax considerations to the oil industry have developed a tremendous private oil industry in our country, and special other considerations to other forms of industrial development in the country have also provided the means by which these industries pull themselves up from their bootstraps and become full-fledged, independently operating industrial giants. We think that the housing industry needs this kind of implementation to get out in the clear and provide the housing accommodations for American people.[70]

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[69] *Id.* at 278.
[70] *Id.* at 278–279.

On the same point, Mr. Scheuer testified that in addition to public financial assistance the housing industry required the leadership and educational stimulus of laws requiring equality of opportunity. Noting that businessmen in the past have opposed legislation that later came to seem essential to them, such as the Government insurance of bank deposits, requirements for public listing of securities with full disclosure, and ground rules such as minimum wage and hours standards, he said that—

> it is quite clear that businessmen have, with all of their courage and energy and resourcefulness in their own businesses, never been the most accurate judges of what was best either for society or, indeed, what was in their own enlightened best interests.

Thus industry resistance to equal opportunity in housing he considered a passing phenomenon. He added:

> "The encouraging thing is, after the ground rules are passed, the business community, having in its midst fine leadership, has accommodated itself to the ground rules that society, over its opposition, has established. * * * [O]nce the standard, the ethical standard, has been set they accommodate themselves very rapidly; and I think that should give us all great hope for the future." [71]

But perhaps the most hopeful of all the 86 witnesses the Commission heard on housing was a white housewife from Springfield Gardens in Queens who told how real estate speculators tried to start a panic in her neighborhood after some Negroes had moved in, and how "the housewives got up a bit in arms." The issue for them, according to Mrs. Evelyn Klavens, was freedom of choice:

> They had their fears; they had their prejudices, but they felt, by gosh, nobody was going to tell them what to do.[72]

The feeling was, she reported: "Well, we may as well stay here and learn to live with our neighbors on a block because this is something we're going to have to learn, no matter where we go." [73]

They put up the following sign in their homes:

NOT
FOR SALE
WE BELIEVE IN
DEMOCRACY

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[71] *Id.* at 292–293.

[72] *Id.* at 219. "Housewives, as you know, can be a very effective group," she told the Commission. "We're the people who live in the neighborhood, and we're going to decide what's going to happen * * * The husbands just come home in the evening, but we're there." Mrs. Klavens spoke as chairman of the Block Organization of the Neighborhood Relations Committee of the Tri-Community Council, which comprises the areas of Springfield Gardens, Rosedale, and Laurelton in Queens. She was also a member of the board and chairman of the Community Relations Committee of the PTA of Public School No. 37.

[73] *Id.* at 220. Their community has become "a human relations workshop," but Mrs. Klavens said, "We are just average New York citizens, like any other community you could find anywhere, with a mixture of all kinds of people in terms of economic levels and religious levels, and in terms of the racial levels now too. . . . We are a lovely community, and geographically we're wonderfully located. . . . We want to stay because it's a convenient community, because we like it."

"We did not just want to put up a sign "Not For Sale," because we thought the new neighbors would feel that it was directed toward them," Mrs. Klavens explained. "So, therefore, the bottom sign, 'We Believe In Democracy,' let the new neighbors know they were welcome. * * *"

So far they have succeeded in stabilizing their community on this democratic basis.[74] "It's either this," Mrs. Klavens said, "or taking a rowboat and rowing off Montauk Point, and then who knows * * * you might meet a fish you don't like." [75]

STATE ADVISORY COMMITTEE REPORTS

The Commission's State Advisory Committees submitted considerable information on the respective roles of the real estate brokers, builders, and financing institutions. The facts, statistics and opinions in the following excerpts are those given by the State committees, and have not been verified by the Commission.

ALASKA

"On investigation of complaints regarding the financing of homes, there was no substantiating evidence that discrimination because of race, creed, or national origin occurred. * * * The major difficulty pointed to a lack of qualified applicants from an economic standpoint. * * * Further investigation shows that because of the seasonal nature of a large part of the employment picture in Alaska, many applicants cannot comply with the requirements of most lending institutions that the applicant have steady year-round employment. There is some evidence that discrimination of a subtle nature does exist in regard to the sale or purchase of property (principally dwelling units) to minority groups."

ARIZONA

"If an Indian or Mexican is financially able, he may live where he pleases. This is different for the Negro. He is forced to live in or near segregated areas no matter what his economic position. This is not because of law, but because of pressure exerted by real estate and loan companies. * * * It is a subtle opposition with which the Negro cannot cope."

CALIFORNIA

Los Angeles

"The members of the South-West Realty Board will not sell or enter into a sale with another broker if the buyer is of a minority group unless there are three or four minorities in the block.

"Until 1946, finance companies would not make loans to Orientals in this area, but when it was shown that they could bring in private finance the major companies began to yield. * * * Three months ago the State director of savings and loan discouraged a group of Oriental citizens from trying to start a savings and loan company, and shortly after this discussion the sponsors received phone

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[74] *Id.* at 228. The neighborhood committee also enlisted the help of the clergy who issued a joint statement; it visited real estate brokers and boards and requested them not to deluge blocks with solicitation of sales; it made up a list of offending brokers; it sought assistance from the State and city agencies against discrimination; it visited banks to convince them to continue granting mortgage loans to white people moving into the area. *Id.* at 224–228.

[75] *Id.* at 223.

calls from several existing loan companies. * * * Many savings and loan companies still refuse to make loans to members of minority groups and in neighborhoods where even a few members of the Negro race live. Some insurance companies upon the resale of the property will not renew or permit the loan to be assigned to the new owner (regardless of his ability to pay) because the neighborhood has a few minority families in the block. * * * It seems that some of the large insurance companies charge a higher rate of interest or add additional points if the buyer is other than Caucasian. * * * There is, however, a bright side to this picture wherein many finance companies in the areas involved are making every effort in soliciting the patronage of any client who can qualify regardless of race or religion.

"The proof for the need and the salability of a well-built home is quite evident by the fact that whenever an unrestricted group of new homes [is] built, there is a 'sold' sign on most of the homes before they are completed, especially in the Pacoima-Watts and south-of-Compton area. * * * The need is for small, scattered projects located near where the people work. * * * The popular market is for homes ranging from $9,000 to $12,000."

COLORADO

"It was found that there is the greatest amount of discrimination particularly against Negroes living in new suburban areas where new houses and subdivisions are being built. Builders and subdividers influence this policy by a so-called protective education requirement to inform occupants regarding the potential occupancy of any dwelling by a minority group member. * * * There were many limitations and restrictions in resort areas. * * * It appeared * * * that there are areas within the new surburban developments wherein racial discrimination, as against Jews, is still supported by 'gentlemen's agreements'. * * * In the purchase and ownership of farms and ranches, there were limitations which * * * evidenced the disposition of real estate agents who presupposed communities and neighbors * * * There has been found a use of 'scare tactics.' Some real estate agents will sell a house on the perimeter of a residential area, nonminority, to a minority family. They will then tell all the residents, other than minority, their property values are about to decline and their homes should be put on the market immediately. * * * A significant part of the planning for exploitation in the extension of the ghettoized area in the larger cities, particularly Denver, is participated in by Negro real estate agents * * * [On the other hand] there is some exclusion of nonwhite real estate brokers and real estate men from listings in areas which have been prescribed as outside the ghetto or transitional area.

"Lending institutions are considerably influenced by the established residential lines and zones. In some smaller towns * * * it would appear that the housing purchase situation and lending for purchase is even more defined * * *. Minority-group purchasers are frequently required to meet credit standards higher than anyone else.

"The openly expressed policy of most groups in Colorado today, all over Colorado, and particularly in Denver, by boards of realtors, lending and financing institutions, is against discrimination. This is a change coming about in recent years."

DELAWARE

"Tacitly, [racial covenants] are still in operation. Property owners, real estate operators, and real estates developers still have, in many instances, silent agreements. * * * To the subdividers and developers must be given most of the responsibility for the instigation of these silent exclusion policies toward

Negro occupancy in new developments. They are the first commercial developers of urban land. * * * They determine the general character of the area. * * * In this way subdividers and developers can and do influence the pattern for residential segregation before the development is occupied.

"In a study of first mortgages on properties occupied by Negroes, it was found that these properties yielded higher rates than properties owned by whites. It has been established that higher rates are customary of loans from all sources of financing except homes financed by government agencies. Negroes also face difficulty in obtaining loans on real estate from financial institutions; therefore, the financing of Negro real estate must depend upon individuals for mortgage money.

"To the question: Are members of minority groups on real estate boards? we can answer 'No' without equivocation."

GEORGIA

"* * * [I]n the smaller communities and rural areas * * * Negroes cannot obtain * * * conventional loans as easily as they can in Atlanta. Competition in the lending market by well-financed Negro institutions in Atlanta has not stimulated lending to Negroes in the smaller cities and rural areas * * *.

"The market for Negro rural-farm housing diminishes, at least in north Georgia, as the emigration to the city from the farm continues, and neither white nor Negro dealers in the area checked (where Negro population is relatively low) felt that Negro rural housing is worthy of speculation or investment."

Atlanta

"Occasionally individual home owners * * * refuse to sell to Jews and so instruct their real estate agents, but most of the agencies have indicated, the report [Anti-Defamation League] says, that they do not themselves have a restrictive policy."

ILLINOIS

Chicago

"* * * [T]here is no apparent willingness on the part of the homebuilding industry to construct any new housing for Negroes in the Chicago area on any but a rigid segregated basis. * * * Sites on which minority housing is constructed are often inferior to those selected for all-white developments. For example, one builder in a Southwest Chicago suburb has put up two developments, one for whites, the other for Negroes. They are approximately a mile distant from each other. That built for Negroes is on a heavily traveled State route, has a gridiron street pattern, and no shopping facilities.

"* * * [T]he contract purchase is often resorted to as a last means to obtain good housing, frequently because they do not have access to regular mortgage financing. * * * Our appraisal of the operations of the mortgage industry suggest that major finance institutions are unwilling to lend to Negroes for a fear of an uncertain financial future occasioned by the presence of Negroes in the community. We also observe a practice by the mortgage industry that denies financing to a Negro who may be the first to seek housing in an all-white area—this despite the tendency for the same institutions to grant the same Negro a loan in an area of Negro concentration.

"Traditionally organized board or other real estate groups have resisted the advent of Negro homeseekers in all-white communities. * * * It is frequently alleged that local real estate boards play a key role in deciding when a given community may be 'available' to nonwhites. Prior to such decision members of the board who dared to violate racial codes have been expelled. After such a decision, however, such a community becomes fair game for all operators—

including speculators to make handsome profits by utilizing scare tactics on the white homeowners, and increasing prices to the 'captive nonwhite market'. * * * Exclusion of Negro and other nonwhite brokers from the professional association is but another symbol of the separate housing markets and the racial attitudes of the real estate fraternity."

INDIANA

"Practically all housing being built in Indiana is for racial groups with none on an open occupancy basis. Mortgage financing is available to all groups on the same terms, with limitations imposed as to capital risk. Financing is not available for open occupancy developments. * * * Real estate boards, as a rule, do not admit members of minority groups to membership."

Fort Wayne

"There have not been any efforts made on integrated housing in any particular. One attempt has been made to make separate but equal housing to Negroes on a limited basis. Lots for 140 homes are available for homes in the price range of $10,000 to $16,000."

Indianapolis

"The prevailing practice is for builders to concentrate on housing for racial groups if they build at all. There is no new housing available for 'open' or interracial occupancy on record. * * * Mortgage financing is availabel to nonwhite families in segregated areas on prevailing interest rates. Those living in blighted or economically changing neighborhoods have the usual difficulties in obtaining mortgages, based upon the capital risk rather than upon racial discrimination. Mortgage financing is not available for open-occupancy development or in restricted areas. There is rumoured to be a 'gentlemen's agreement' not to make loans until there are three nonwhite families in a block.

"The Real Estate Board of Indianapolis has no set rules regarding the selling of Real Estate to other than white residents. * * * However, they have rules that the membership is expected to observe. One is that no member may sell a house in a white area to a nonwhite family, and if he does he is subject to reprimand by the real estate board. If two or more nonwhite families have residence in a given neighborhood, then no question is raised. * * * Inquiry was made as to the membership of the Indianapolis Real Estate Board. * * * It was stated that the Negro brokers have their own board and seem to be perfectly happy with the arrangements!"

South Bend

"Relative to the construction of new homes for nonwhite occupancy, an official of the local builders association stated that there was developing more willingness on the part of builders to seek out nonwhites with greater job security and build homes at their income levels. * * * He expressed the desire for selective placement in order to open new avenues for better housing for Negroes.

"In an interview with a member of the local real estate board, * * * it was stated that the board is more concerned with nonwhites doing more rehabilitation in the areas which they now occupy. The board, as a group, is generally not willing to take a big step toward opening all-white areas for mixed racial occupancy. The majority of the members will not sell homes to nonwhites in existing all-white neighborhoods."

KANSAS

"There is quite clearly an understanding among house builders, subdividers and mortgage lending agencies that minority group members will not be permit-

ted to 'break into' new residential areas and even many older areas. All three groups offer the rationale that, when integration takes place, housing values go down and they have money at stake which they would lose. Particularly in Wichita where there have been some defaults and foreclosures in transitional areas this problem is highlighted. There are no collective efforts * * * that is, * * * no community association or block associations which have developed plans for integrated housing in such a way that values will not be decreased by 'panic selling.' There develops a cycle in which house builders, subdividers and mortgage lending agencies fear that housing values will depreciate and therefore they discourage minority members from seeking to enter white areas."

Kansas City

"* * * [T]he Kansas City real estate board is said not to allow its members to sell to Negroes property which has not been labeled 'Colored'."

Wichita

"One Negro realtor is a member of the local real estate board. * * *

"Many signs appear in newly platted areas stating, 'This is a restricted area.' Followup telephone conversations with brokers establish that these areas are not open to Negroes."

KENTUCKY

Lexington

"There are no open-occupancy areas in Lexington, nor have there been any Negro houses built in new white areas. * * * It is our opinion, nevertheless, that financing of this type housing by a lending institution in this community would be practically impossible. * * * According to * * * a Negro realtor, it is next to impossible for a Negro to obtain a conventional loan * * * because * * * of the inability of Negroes to satisfy the income requirements in order to qualify." A banker said that "he would not make any conventional loans to Negroes [because] the investors he represents are insurance companies interested in property on the 'upgrade and not on the downgrade'. * * * Negro housing [for the most part] consists of older houses and once a house is 10 or 15 years old it is out of the lending market.

"In the last 10 years there have been only two subdivision areas where Negroes have been able to buy. * * * These are Haskins Drive and St. Martin's Village. * * * [The former] contains 26 houses with prices in the vicinity of $10,000 * * * with no lots available for additional homes. * * * [The latter] contains 150 homes and there are lots available for additional homes. It will ultimately contain 209 homes with prices ranging from $7,000 to $15,000. * * * While St. Martin's Village is not by any means luxurious, it is attractive and well kept and is one of the finest Negro middle-income subdivisions in the South."

MASSACHUSETTS

"With reference to financing of private housing for nonwhites, a consensus among realtors, real estate boards, and some brokers is that they are not in a position to contribute a great deal to the alleviation of these discriminations. Most of them claim that you must follow the directions of the sellers who list their property with them * * * Real estate boards have not, as such, taken an active interest in minimizing this discrimination, although a number of individuals in various parts of the Commonwealth who lease, sell, or own houses, apartments, etc., have made an earnest effort to break down this by offering a limited number of accommodations to Negroes." The Anti-Defamation League is quoted: "Individual property owners and real estate operators have successfully collaborated in keeping sections of Winchester, which is considered a very

desirable surburban residential area, from letting down the religious bars. [This is true] in Weston, Wellesley, and Needham."

"In almost every community where banks have had occasion to finance for nonwhites it has been in a segregated area or in an area changing to a segregated one. On this basis, financing is readily available, but on a basis that suggests smaller mortgages, percentagewise, to assure against possible risk. This would indicate a tendency on the part of lending institutions to consider the risks poorer, primarily because of the nonwhite aspect. In nonwhite areas where a sale is contemplated, local banks seem to be ready, on the whole, to treat a mortgage prospect equal to the white purchaser."

MINNESOTA

"* * * [C]ertain boards of realtors * * * acknowledged the existence of and, generally, the extent of the problem of discrimination in housing. * * * Two such boards report that they have set up committees assigned to the problem and to the servicing of affected individuals when called upon to do so. On the other hand, the committee has found no evidence that any organization of homebuilders has assumed responsibility in this area or acknowledged the existence of a problem."

"The committee finds no evidence that mortgage financing firms practice direct discrimination in the matter of granting loans. However, the committee did find that appraisers for mortgage lending purposes not uncommonly assigned minority group occupancy as a depressing factor in valuation. The committee believes that, as a consequence of this prevalence in appraisal practice, the availability of otherwise comparable liberal primary financing terms (as to size of loan, length or maturity, and interest rates) to minority group members is substantially reduced."

MISSOURI

Kansas City

"In general, in either segregated or transition areas, mortgage financing is difficult without 'lugs' of 8–12 percent which are passed on to the seller who in turn often passes it on to the buyer through an increased selling price. This is not true, however, in the new open-occupancy development where adequate FHA and some GI financing is available. * * * As of now there are no Negro real estate firms which are members of the board."

St. Louis

"* * * [M]ortgage money is difficult to obtain for Negroes in both white residential areas and in racially mixed areas. It is relatively easy to obtain mortgage money in segregated areas."

MONTANA

There is no known case "where the lending institutions or the people have discriminated against people who are not of the Caucasian race. * * * As to the Indians and because they are generally considered wards of the Government * * * the matter of supplying housing by private capital becomes very complicated, if not impossible."

NEBRASKA

Lincoln

"Although no member of a minority group has been a member of the real estate board, certain real estate brokers who are members have likewise been members of interracial committees discussing the problems of housing."

Omaha

"Members of minority groups experience difficulty in finding decent housing largely because homebuilders have been building almost exclusively for the white market. * * * As to the availability of mortgage funds for building by nonwhite groups in white areas, it is stated that there has not been sufficient demand from members of minority groups to determine the attitude of mortgage financiers. But housebuilders in any event have not built for Negroes as a whole for lack of available financing. * * * The Omaha Real Estate Board does not today include any member of a racial minority group * * *"

NEVADA

Las Vegas

"Mortgage financing for minority home buyers is readily available; however, this ranges as high as a 10 percent discount and 12 percent interest. Most new tract developments are definitely not available to minority groups. * * * In the Las Vegas phone book there are 70 real estate firms listed. There is one minority-group real estate broker."

Reno

"Housing builders and real estate brokers have quite generally avoided selling to members of minority groups in developments intended for the general market. There is no doubt that mortgage financing is not as available to members of minority groups as to others. The committee has not been able to determine what extent this lack of financing results from inadequate income and credit capacity of members of minority groups. * * * There are no members of minority groups on local real estate boards. The committee has no evidence, and does not believe, that real estate boards as such have developed discriminatory policies; rather, the committee believes that such policies evolve by informal understandings between individual realtors."

NEW HAMPSHIRE

"Outside of resort areas, it was reported to the Committee that housing is generally available to Jews, but not always in the place of first choice and that in some instances, fear of rejection in socalled 'select neighborhoods' has led Jews to gravitate into small groups in other neighborhoods * * *. The practice of using [restrictive] covenants has practically ceased. However, a more subtle form of control has appeared in place thereof. In one seacoast community where property is held under long-term leases, covenants are uniformly inserted * * * providing that the property may not be sold without first obtaining the written consent of the owner of the reversion. * * * Convincing evidence was received that this power of control is being used to prevent the sale of property to persons of certain religion or national origin."

NEW JERSEY

"* * * [R]eligious and racial restrictions by private owners, by real estate brokers, by lending institutions which grant mortgages have been indicated to us as being among the basic causes of the continuance of these substandard segregated areas."

NEW MEXICO

Albuquerque

"Rental housing * * * through real estate agencies is available only on a racially discriminatory basis, in areas (in the majority of cases) of substandard,

remote locations. * * * Efforts to resolve the housing situation in cooperation with home builders and realtors, have been a complete failure. * * * Realtors who vary from the rigid pattern suffer expulsion from the Realtors Association, losing the advantage of multiple listings."

NEW YORK

"* * * [M]any segments of the housing industry continue reluctant to abandon existing patterns of discrimination against minorities. Industry claims that it does not set those patterns but merely follows the dictates of the majority public. Whether or not this is partly true, it is evident that industry by its practices has helped to confirm and solidify public opinion in this area."

OHIO

"Lending institutions often discriminate in lending to Negroes in mixed areas and to Negroes who are trying to move into all white neighborhoods. Some lending institutions will not finance housing for Negroes under any circumstances and when mortgage financing is available it sometimes involves short-term amortization and high downpayments. The real estate boards also appear to discourage sales of decent, safe, and sanitary housing to Negroes if the homes are located in these controversial areas. No doubt social pressures work upon individuals who sell their own homes. This, when coupled with the apparent practices of banks and real estate dealers, makes it difficult for Negroes to move into better areas, even though they are in all ways qualified to do so."

Columbus

"In Columbus we heard from an individual, a Negro, who tried to obtain financing from 13 institutions. In each case he was told 'No, the house is located in a controversial area.' * * * It was the conclusion of the Columbus Urban League that Negro buyers, regardless of affluence, education or credit rating, would be refused and discouraged if they attempt to purchase a home in the new developments which cater to the white market."

OREGON

Eugene-Springfield area

"* * * [M]ost, if not all, real estate brokers will undertake to find housing for Negro customers, but will show them places in the poorer sections of the city and will not assist them in moving into the better white neighborhoods. If they desire such housing they will have to deal directly with private owners. * * * We believe that a Negro who had the money could, if he were willing to work at it, obtain a desirable building site (though not necessarily the site of his choice), could secure the necessary financing * * * and could build any type of house he wanted * * * He would have to ignore informal pressures, and perhaps threats, but he would meet no official obstacles, and the threats would probably not be carried out."

Portland

"New developments for the general market have been rendered unavailable to minorities by the discriminatory practices. These practices are defended by builders and brokers on the grounds that they fear the reaction of other buyers and renters. That this fear has some basis in fact is shown by a recent study of attitudes in the city. * * * It appears that there is little discrimination as such in making loans for purchases in segregated areas where there is no threat of invasion of white areas. However, the terms available here would

not be favorable because the property is predominantly old. * * * In all-white areas it is probable that a minority group buyer could obtain a loan on terms consonant with his credit rating if he were able to buy a house."

"An organization of real estate brokers is reported to exist in every city, but no minority groups are represented in any of them except in Portland. * * * There are two Negro members of the Portland Realty Board, the only ones in such positions in the State. * * * The policies and practices of realty boards have been such as to * * * protect all-white areas from being invaded by members of the minorities."

PENNSYLVANIA

"Discrimination against Negroes wishing to buy or rent is practiced widely by real estate brokers especially * * * and on occasion also by mortgage lenders. In a study conducted by the Urban League of Pittsburgh in 1956, of 57 white real estate dealers interviewed, all but 3 stated that they would not take part in placing a Negro family in an otherwise all-white block. * * * As one sifts through vast amounts of testimony, the one encountered more often than any other in the matter of housing discrimination is the real estate broker. He often exercises even undue influence over individual owners who are prepared to sell their home without regard to the race or religion of the prospective buyer."

TEXAS

Dallas

The private building industry has built a subdivision for Negroes known as Hamilton Park. "This subdivision, in quality and location, is equal, if not superior, to the average white subdivision in the same price bracket that has been built in recent years * * * At this time there are approximately 750 new homes, all owner occupied; new churches; a new million dollar school; a 17-acre park and playground; a new shopping center, etc. * * * It might be interesting to point out here that * * * there has been not one single default. This has been another factor in counteracting the antiquated idea that the Negro, in so far as housing is concerned, is not a good financial risk."

UTAH

"* * * [W]hen a Japanese buys a home in a predominantly Caucasian area, he will be subject to the practice of waiting out the granting of permission to the broker from the neighbor on either side * * * The difficulty lies with the Code of Ethics adopted by the National Real Estate Board which the State and local boards are required to observe and practice.

"[The Negro] is confined by 'gentlemen's agreements' to substandard dwellings * * *"

VERMONT

"A builder * * * planned a racially mixed development [but] was warned by the bank which finances his FHA insured developments to abandon the plan if he valued his credit."

WASHINGTON

Seattle

There is "the problem of obtaining adequate financing from insurance companies and banks [and the] slowness with which real estate representatives in its membership are able to accept the democratic American standards of offer-

ing equality of opportunity in housing acquisition. * * * There is difficulty in getting real estate firms to admit that discriminatory practices [against Jews] are widespread, even though subtle in some instances."

Spokane

"Negroes find greater difficulty in obtaining home loans than do others in the community. * * * It is significant that when these situations [nonwhites being barred from a community] have been called to the attention of the real estate board, firm denials of discrimination are made, which leads us to believe that a closer examination into the practices of real estate men in that city are in order."

WEST VIRGINIA

"* * * [I]t is evident there is definitely discrimination practiced on a universal basis. This particularly applies to real estate brokers, sellers of property and subdivision developers. The subtlety used in such practices has thus far kept them from becoming a public issue."

WYOMING

"So far as the Advisory Committee has been able to determine, there is no discrimination so far as financing home buying, either in the financing itself or in the areas where homes are purchased."

At the Commission's National Conference of State Advisory Committees, former Governor Charles A. Sprague of Oregon presented a synopsis of the findings and conclusions of the six housing roundtables. The following is an excerpt from that presentation:

"The means by which * * * discrimination is practiced is, first, the practice among real estate agents not to introduce a colored person into white neighborhoods on the grounds that it would be offensive to the neighbors and, further, on the fear that an influx of colored residents would result in a depreciation of the property value. Another practice, which is reported in some States, is the refusal of lending institutions to finance the purchase of homes in better residential districts occupied by whites or to finance the building of new homes in suburban areas. Financing, however, was reported to be available where segregated housing was proposed."

"With reference to possible remedies, various ideas were offered in the several sections. Considerable emphasis was put on education of the people as to the unfairness of discrimination in housing. It was urged that religious and civil organizations could do a great deal to promote a better understanding between races and thus reduce the impact of discrimination in housing. * * * This education could be directed against those agencies such as real estate boards and financing institutions to persuade them to drop the practices of racial discrimination."

"Discussion of the relative virtue of campaigns of education and special legislation seemed to resolve itself into an agreement that both are needed. Education is needed to obtain legislation, and to obtain compliance after legislation is enacted. Also, that legislation, itself, is a primary educational factor so that the two can well go hand in hand. It was remarked, too, that suitable policing is needed when legislation is enacted lest it prove to be a dead letter.

"The report might very well be concluded with a hopeful note deriving from the fact that this problem of discrimination in housing is receiving general and serious concern in all parts of the United States, which is bearing fruit in programs of action to solve the problems."

CHAPTER VI

HOUSING: FINDINGS AND RECOMMENDATIONS

EQUAL OPPORTUNITY TO SECURE DECENT HOMES

Background

It is the public policy of the United States, declared by the Congress and the President, and in accord with the declared purposes of the Constitution, that every American family shall have equal opportunity to secure a decent home in a good neighborhood. Since the home is the heart of a good society it is essential that this aspect of the promise of equal protection of the laws be fulfilled forthwith.

From the Commission's study of housing, two basic facts were found to constitute the central problem.

First, a considerable number of Americans, by reason of their color or race, are being denied equal opportunity in housing. A large proportion of colored Americans are living in overcrowded slums or blighted areas in restricted sections of our cities, with little or no access to new housing or to suburban areas. Most of these Americans, regardless of their educational, economic, or professional accomplishments, have no alternative but to live in used dwellings originally occupied by white Americans who have a free choice of housing, new or old. Housing thus seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay. It would be an affront to human dignity for any one group of Americans to be restricted to wearing only hand-me-down clothing or to eating the leftovers of others' food. Like food and clothing, housing is an essential of life, yet many nonwhite families have no choice but secondhand homes. The results can be seen in high rates of disease, fire, juvenile delinquency, crime and social demoralization among those forced to live in such conditions. A nation dedicated to respect for the human dignity of every individual should not permit such conditions to continue.

Second, the housing disabilities of colored Americans are part of a national housing crisis involving a general shortage of low-cost housing. Americans of lower income, both colored and white, have few opportunities for decent homes in good neighborhoods. Since most suburban housing is beyond their means, they remain crowded in the central city, creating new slums. Since colored people comprise a rising proportion of the city dwellers with lowest income, these slums are becoming increasingly colored. The population of metropolitan areas, already comprising over 60 percent of the American

people, is growing rapidly not merely by births but by migration. These migrants, many of them colored, most of them unadapted to urban life, form the cutting edge of the housing crisis.

From these facts it is evident that for decent homes in good neighborhoods to be available for all Americans, two things must happen: the housing shortage for all lower income Americans must be relieved, *and* equality of opportunity to good housing must be secured for colored Americans. If racial discrimination is ended but adequate low-cost housing is not available, most colored Americants will remain confined in spreading slums. If low-cost housing is constructed in outlying areas and little or none of it is available for colored Americans, the present inequality of opportunity and the resulting resentments and frustrations will be accentuated.

The need is not for a pattern of integrated housing. It is for equal opportunity to secure decent housing. The difficulties in achieving this are considerable. Most of the available city land is already occupied and the cost of clearing slum property for new low-rent housing is practically prohibitive without government assistance. The pressure for expansion of overcrowded Negro areas is so great that when an opening occurs, the pent-up Negro demand pours into the new area and the white residents usually flee in panic. The Negro's need for an alternative to "blockbusting" as a way of securing housing must be met just as the legitimate interests of white neighborhoods on the edge of Negro expansion areas must be protected. To achieve both these results and relieve the pressure of the present Negro concentration, new housing opportunities available to Negroes on all levels of income must be opened in the metropolitan area generally, and slum clearance and the construction of new housing must take place in the central city.

The development of adequate and sound programs to achieve such equal opportunity to decent housing is urgent. The Commission found that a number of existing city, State, Federal, and private programs are contributing to this. It offers the following specific findings and recommendations as a further contribution to the necessary public understanding and action.

CITY AND STATE LAWS, POLICIES, AND PROGRAMS

Findings

In New York City, as in Pittsburgh and in four States—Colorado, Connecticut, Massachusetts, and Oregon—there are far reaching laws against discrimination in the sale or rental of multi-unit private housing, and all publicly assisted housing. In New York State, as in 10 other States, there are laws against discrimination in publicly assisted or urban renewal housing. Officials and community leaders

in New York testified that these laws are having a valuable educational effect and that their enforcement, principally through mediation by the city Commission on Intergroup Relations and the State Commission Against Discrimination, is helping to promote equal opportunity in housing.

In Atlanta, the work of the Mayor's West Side Mutual Development Committee, representing equally the Negro and white people in the area of the city undergoing the greatest racial transition, has served to replace blockbusting and reduce racial tension and violence by means of expanding Negro residential areas through negotiation and consent. This has enabled Negroes in Atlanta, unlike those in most American cities, to gain access to good outlying land and to build new suburban neighborhoods.

In Chicago, which has neither New York's laws against discrimination nor Atlanta's policy of negotiating agreements for Negro expansion, the Commission found that the Negroes' primary method of securing better housing was through the mutually unsatisfactory system of blockbusting, with the consequent uprooting of adjacent white neighborhoods and with inevitable racial tension and occasional violence.

On the basis of its hearings in these three cities the Commission finds that, whatever the particular approach adopted, some official city and State program and agency concerned with promoting equal opportunity to decent housing is needed. Such programs and agencies can bring about better public understanding of the problems and better communication between citizens. Whether or not cities or States are prepared to adopt antidiscrimination laws, and even in areas where racial separation is the prevailing public policy, it is possible that through interracial negotiation practical agreements for progress in housing can be reached. Where public opinion makes possible the adoption of a law against discrimination in housing, this might contribute significantly to the work of the agency promoting equal opportunity in housing. Then the agency would have legal support in its efforts at mediation and conciliation.

Recommendation No. 1

Therefore, it is recommended that an appropriate biracial committee or commission on housing be established in every city and State with a substantial nonwhite population. Such agencies should be empowered to study racial problems in housing, receive and investigate complaints alleging discrimination, attempt to solve problems through mediation and conciliation, and consider whether these agencies should be strengthened by the enactment of legislation for equal opportunity in areas of housing deemed advisable.*

*Additional Proposal by Commissioners Hesburgh and Johnson:

Beyond the above recommendation, we wish to add that it would be helpful if all real estate boards admitted qualified Negroes to membership. In view of the important role real estate boards play in determining housing policies and patterns throughout a community, we believe these boards are not merely private associations but are clothed with the public interest and that the constitutional principle of nondiscrimination, applicable to all parts of our public life, should be followed. With white and Negro realtors meeting and working together, misunderstandings could be cleared up and there would be greater possibility of solving racial housing problems through negotiation, understanding, and good will.

OVERALL FEDERAL LAWS, POLICIES, AND PROGRAMS

Findings

The Federal Government now plays a major role in housing. Its participation in slum clearance, urban redevelopment, public housing and mortgage loan insurance amounts to billions of dollars. The Constitution prohibits any governmental discrimination by reason of race, color, religion, or national origin. The operation of Federal housing agencies and programs is subject to this principle. In addition there is in effect an act of Congress adopted in 1866 and reenacted in 1870 that recognizes the equal right of all citizens, regardless of color, to purchase, rent, sell, or use real property.

While the fundamental legal principle is clear, Federal housing policies need to be better directed toward fulfilling the constitutional and congressional objective of equal opportunity. Mr. Norman Mason, the Administrator of the House and Home Finance Agency, who is responsible for coordinating the various housing programs of the constitutents of HHFA, testified before this Commission that he intends to develop policies that will further promote the principle of equal opportunity in all these housing programs. The Commission finds that there was much that the Administrator of the HHFA can do, through careful and determined administration, to assure that the principle of equal opportunity in Federal housing programs is applied not only in the top policies but at the operating levels in each constituent agency.

Because of the paramount national importance of this problem the Commission finds that direct action by the President in the form of an Executive order on equality of opportunity in housing is needed. The order should apply to all federally assisted housing, including housing constructed with the assistance of Federal mortgage insurance or loan guaranty as well as federally aided public housing and urban renewal projects.

There have been such Executive orders calling for the application of the principles of equal opportunity and equal treatment in the

fields of Government contracts and Government employment, and in the armed services. Instead of establishing a new Presidential Committee, as was done in these other Executive orders, the President could request the Commission on Civil Rights, if its life is extended, to conduct the necessary continuing studies and investigations and make further recommendations.

Recommendations Nos. 2 and 3

Therefore, it is recommended:

That the President issue an Executive order stating the constitutional objective of equal opportunity in housing, directing all Federal agencies to shape their policies and practices to make the maximum contribution to the achievement of this goal, and requesting the Commission on Civil Rights, if extended, to continue to study and appraise the policies of Federal housing agencies, to prepare and propose plans to bring about the end of discrimination in all federally assisted housing, and to make appropriate recommendations.

That the Administrator of the Housing and Home Finance Agency give high priority to the problem of gearing the policies and the operations of his constitutent housing agencies to the attainment of equal opportunity in housing.

FHA AND VA

Findings

The present policy of the Federal Housing Administration and the Veterans Administration is not to do further business with a builder who is in violation of a State or city law against discrimination. However, waiting upon the appropriate State or city agency to make a finding of violation of State or city law may result in Federal assistance to a builder who is openly or manifestly evading such law. By the time any State or city action against such a builder has been completed the projects may well have been built and sold or rented on a discriminatory basis.

Recommendation No. 4

Therefore, it is recommended that in support of State and city laws the Federal Housing Administration and the Veterans Administration should strengthen their present agreements with States and cities having laws against discrimination in housing by requiring that builders subject to these laws who desire the benefits of Federal mortgage insurance and loan guaranty programs agree in writing that they will abide by such laws. FHA and VA should establish their own factfinding machinery to determine whether such builders are violating State and city laws, and, if it is found that they are, immediate steps should be taken to withdraw Federal benefits from them, pending final action by the appropriate State agency or court.

PUBLIC HOUSING

Findings

The location of sites for public housing projects and the kind of housing provided play an important part in determining whether public housing becomes almost entirely nonwhite housing, whether it accentuates or decreases the present patterns of racial concentrations, and whether it contributes to a rise in housing standards generally. A policy of "scatteration" of smaller projects throughout the whole metropolitan area may remedy some of the present defects of public housing.

Public housing projects can serve as schools for better housing and homekeeping. A large number of the tenants are recent migrants from rural areas, unprepared for urban life. Placing them in decent housing units and requiring that decent standards be maintained will help them make a successful adjustment to city life. Locating these projects in better neighborhoods and making them less institutional in appearance will add to this educational process.

As a result of the large number of nonwhites in need of low-cost housing and the tendency of whites to avoid living in the midst of a nonwhite majority, many projects are all or predominantly nonwhite. This may result in a proportion of nonwhite occupancy higher than that actually warranted under the Public Housing Administration's "racial equity" formula based on the estimated needs of the two racial groups. In one city the Commission found that the location of public housing sites within areas of Negro concentration resulted in *de facto* discrimination against low-income white citizens.

Recommendation No. 5

Therefore, it is recomended that the Public Housing Administration take affirmative action to encourage the selection of sites on open land in good areas outside the present centers of racial concentrations. PHA should put the local housing authorities on notice that their proposals will be evaluated in this light. PHA should further encourage the construction of smaller projects that fit better into residential neighborhoods, rather than large developments of tall "high-rise" apartments that set a special group apart in a community of its own.

URBAN RENEWAL

Findings

City and private programs of slum clearance, conservation and redevelopment, assisted by Federal aid from the Urban Renewal Administration, are changing the face of the Nation. Since nonwhite residents comprise a large proportion of the persons displaced by these

programs and since nonwhites do not have equal opportunity to housing, it is important that special needs and problems of the nonwhite minority receive adequate and fair consideration in all such programs.

Recommendation No. 6

Therefore, it is recommended that the Urban Renewal Administration take positive steps to assure that in the preparation of overall community "workable programs" for urban renewal, spokesmen for minority groups are in fact included among the citizens whose participation is required.

SUPPLEMENTARY STATEMENT ON HOUSING

By Vice Chairman Storey and Commissioners Battle and Carlton

We yield to no one in our goodwill and anxiety for equal justice to all races, in the field of housing as elsewhere. A good home should be the goal of everyone regardless of color, and the Government should aid in providing housing in keeping with the means and ambitions of the people. Government aid is important where public improvements have displaced people and where slums become a liability to the community. This does not mean, however, that the Government owes everyone a house regardless of his ambition, industry, or will to provide for himself. When generosity takes away self-reliance or the determination of one to improve his own lot, it ceases to be a blessing. We should help, but not pamper. But there remains a financial limit beyond which the Government cannot go.

In dealing with the problem of housing, we must face realities and recognize the fact that no one pattern will serve the country as a whole. Some parts of the foregoing report are argumentative, with suggestions keyed to integration rather than housing, and if carried out in full will result in delay and in many cases defeat of adequate housing, which is our prime objective. The repeated expressions, "freedom of choice," "open housing," "open market," and "scatteration" suggest a fixed program of mixing the races anywhere and everywhere regardless of the wishes of either race and particular problems involved. The result would be dissension, strife, and even violence evident in sections where you would least expect it.

To us it is not only wise, but imperative that biracial committees be set up in different sections to provide areas for adequate housing in keeping with just requirements for the people involved. This can be done, it is being done in different sections such as Atlanta, Ga., in keeping with the wishes of both races. This responsibility, however, must be met in a positive, courageous, and constructive manner in keeping with the requirement at the local level.

SUPPLEMENTARY STATEMENT ON HOUSING

By Commissioners Hesburgh and Johnson

While the Commission has not had time to consider many important aspects of the complicated housing problem in view of its primary attention to investigations of alleged denials of the right to vote, and of its studies in the education field, three points that were much under discussion in the Commission's housing hearings in our opinion deserve special attention.

(1) *Relocation of persons displaced by federally aided projects.*—The Commission has found that nonwhite Americans constitute a high proportion of those displaced by urban renewal programs (and, it should be added, by federally-aided highway programs), and that such nonwhites are severely restricted in their housing opportunities. We believe that, in addition to the recommendation of the Commission that in the preparation of local "workable programs" for urban renewal there be adequate nonwhite participation, other measures should be taken to assure that the human side of slum clearance and redevelopment is given adequate attention.

For instance, the Federal-aid highway program, which is displacing an increasing number of urban residents and is often being used to clear slums, has no provision requiring that displaced families be rehoused in accordance with specific standards, nor is any financial assistance provided for their relocation. While property owners receive compensation for property condemned, the problem of relocation arises largely in urban areas where those displaced, many of them tenants who receive no compensation, have great difficulty finding, or cannot find, decent, safe, and sanitary dwellings within their means.

In the urban renewal program, on the other hand, the act of Congress requires that "decent, safe, and sanitary dwellings" be available at rents and prices within the financial means of the displaced families, either in the urban renewal area itself, or in areas "not generally less desirable." However, the Commission received evidence that such housing for relocation is in some places not in fact available.

President Eisenhower has said that steps must be taken "to insure that families of minority groups displaced by urban redevelopment operations have an opportunity to acquire adequate housing." It seems to us essential that all the Federal agencies take such positive steps to assure that these minimum human requirements of slum clearance and redevelopment are in fact met by the local communities.

While the Federal-aid highway program should not be turned into a housing program, the act should be amended to provide that in any urban area where any substantial number of low-income persons are to

be displaced by the construction of a federally aided highway, the locality must incorporate the highway program in its urban renewal program, and the relocation requirements and standards of the Urban Renewal Administration must be met in regard to all such displaced persons, or the localities must otherwise see that decent, safe, and sanitary housing is available to such persons.

(2) *Racial patterns in urban renewal.*—As President Eisenhower has also said, the Federal Government must "prevent the dislocation of such [minority-group] families through the misuse of slum clearance programs." In the Commission's housing hearings there were allegations that urban renewal programs are being used in some instances for "Negro clearance" and that new patterns of segregated neighborhoods are either being created or existing patterns of segregation are being substantially accentuated. With the nonwhite citizens' participation in planning urban renewal at the local level which the Commission has recommended such questions should be raised at an early stage. In addition, we recommend that communities' workable programs and specific urban renewal projects be examined by the Urban Renewal Administration and the Housing and Home Finance Administrator to assure that no community is using Federal urban renewal assistance to accomplish such results. Examination of each urban renewal project in this light will require the services of persons of special competence in the field of intergroup relations.

(3) *The shortage of low-cost housing.*—The studies and hearings of the Commission have shown that progress in remedying the lack of opportunity to decent housing by nonwhite Americans depends in large part upon progress in overcoming the general housing shortage for lower income Americans. This is also directly connected with relocation and urban renewal. Slum clearance and urban redevelopment are necessary, but they require the provision of decent low-cost housing for those displaced. President Eisenhower has said that the Government will "encourage adequate market financing and the construction of new housing for such families on good, well-located sites."

In the absence of better answers, it seems imperative that the present programs of urban renewal, public housing, home mortgage insurance and assistance, including the Voluntary Home Mortgage Credit Program, be continued on a sufficiently long-term basis to make sound planning by local housing authorities possible. Beyond this, most officials, housing experts, and industry leaders testified that further efforts must still be undertaken to encourage the construction and sale of decent, low-cost private housing.

The Commission did not try to make specific recommendations in these areas that require expert knowledge, but we would like to stress

the importance of this being done and of sound measures being put into effect by those who are so competent.

In view of the testimony in Atlanta and Chicago that the ceiling on section 221 (low-cost relocation housing) mortgage insurance is too low for new housing in urban areas, and in view of the recent action of Congress in approving an increase in the permissible amounts of FHA mortgage insurance, including an increase in the ceiling on section 221, consideration should be given to raising the section 221 limitations to levels consistent with the cost of new housing in urban areas. Consideration should also be given to proposals made by leaders of the housing industry in the Commission's hearings for the reduction of the cost of financing housing for lower income residents, including proposals for special mortgage assistance through the Federal National Mortgage Association and for direct loans such as those provided at 3⅛ percent interest for 40 years in the college housing program of the Community Facilities Administration.

Without trying to appraise particular proposals, it can be said that programs to overcome the housing shortage for lower income Americans are not luxuries but are essential needs of the nation.

PART FIVE. THE PROBLEM AS A WHOLE

Through its studies of three particular aspects of civil rights—voting, education, and housing—the Commission has come to see the organic nature of the problem as a whole. The problem is one of securing the full rights of citizenship to those Americans who are being denied in any degree that vital recognition of human dignity, the equal protection of the laws.

To a large extent this is now a racial problem. In the past there was widespread denial of equal opportunity and equal justice by reason of religion or national origin. Some discrimination against Jews remains, particularly in housing, and some recent immigrants undoubtedly still have to overcome prejudice. But with a single exception the only denials of the right to vote that have come to the attention of the Commission are by reason of race or color. This is also clearly the issue in public education. In housing, too, it is primarily nonwhites who lack equal opportunity. Therefore, the Commission has concentrated its studies on the status of the 18 million Negro American citizens, who constitute this country's largest racial minority.[1] If a way can be found to secure and protect the civil rights of this minority group, if a way can be opened for them to finish moving up from slavery to the full human dignity of first-class citizenship, then America will be well on its way toward fulfilling the great promises of the Constitution.

In part this is the old problem of the vicious circle. Slavery, discrimination, and second-class citizenship have demoralized a considerable portion of those suffering these injustices, and the consequent demoralization is then seen by others as a reason for continuing the very conditions that caused the demoralization.

The fundamental interrelationships among the subjects of voting, education, and housing make it impossible for the problem to be solved by the improvement of any one factor alone. If the right to vote is secured, but there is not equal opportunity in education and

[1] The Commission has not been unmindful of somewhat similar problems faced by the 797,000 Puerto Ricans in the continental U.S. (*Facts and Figures*, April 1958 edition, Migration Division, Department of Labor, Commonwealth of Puerto Rico), the 259,397 Oriental Americans (1950 Census Report P–B 1, Bureau of Census), the 2,281,710 Spanish and Mexican Americans in Arizona, California, Colorado, New Mexico and Texas (1950 Census, Report P–E, No. 3C, Bureau of the Census) and the 469.900 American Indians (1957 estimate of U.S. Public Health Service, Indian Health Branch). Some State Advisory Committees were able to give considerable attention to these problems. A more comprehensive study of them is indicated.

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housing, the value of that right will be discounted by apathy and ignorance. If compulsory discrimination is ended in public education but children continue to be brought up in slums and restricted areas of racial concentration, the conditions for good education and good citizenship will still not obtain.

If decent housing is made available to nonwhites on equal terms but their education and habits of citizenship are not raised, new neighborhoods will degenerate into slums.

On the other hand, there is a positive correlation, too. In Atlanta, according to uncontradicted testimony by both white and Negro leaders, the extension of the right to vote to Negroes some years ago has contributed to improvement in racial relations in other areas, including housing.[2]

Similarly, the establishment in Atlanta many years ago of a number of institutions of higher learning for Negroes, now organized in the Atlanta University system, has been a significant factor in making possible both Negro voting and increasing opportunities in housing. Racial tolerance, according to Mayor Hartsfield, "goes up with education and down with lack of education." [3]

And in its turn the new areas of high standard Negro housing in Atlanta appear to be raising the standards of both Negro education and voting. The Commission saw the new schools being erected in the Negro suburbs. There is clear evidence that the proportion of Negroes registered to vote is highest in districts with good housing and lowest in slums, as is true among white citizens.[4]

Many racial problems which now appear so difficult "will be less difficult tomorrow," said the chairman of the Citizens' Crime Committee of Atlanta, "when and if the blessings of proper housing for

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[2] Regional Housing Hearings, p. 448. "In city planning the city fathers began looking at the needs of all citizens regardless of color," testified a Negro historian who recalled that "before the Negro actually voted in large numbers there were many Negro areas where the streets weren't paved and didn't have any street lights" (*id.*, at 589, 593). "Before we were voting in larger numbers we did not get the type of cooperation from the previous city administration that we are getting now," said a Negro business leader (*id.* at 459). With the increase in the Negro vote from 6,000 to 25,000 in 1946 "the social climate of Atlanta changed very definitely with respect to the Negro getting the amenities and facilities needed for housing," said another Negro witness (*id.* at 526–27). The president of the all-white Atlanta Real Estate Board and a leading white developer agreed. (*Id.* at 539–40).

[3] (*Id.* at 442.) This center of Negro education, in the opinion of a white community leader, "has been one of the things which has helped us most to solve our problems here in Atlanta (*id.* at 450).

[4] Following the Commission's Atlanta hearing, one of the witnesses, Professor C. A. Bacote of Atlanta University, submitted a supplemental exhibit showing that in Atlanta precincts comprised of upper income Negroes the percent of those registered of the population of those precincts ranged from 40 to 52 percent (precincts A and D of ward 7 and B of ward 3), compared with 14 to 21 percent of lower income Negro precincts (precinct N of ward 3 and H of ward 6). Similarly, the percent of those registered of the population of upper income white precincts ranged from 39 to 56 percent (precincts A, B, and C of ward 8), compared with 13 to 19 percent of lower income white precincts (precinct D of wards 1 and 6). There is a correlation of higher registration with both better housing and with higher income, which go together.

all classes and segments of the population is available. As housing improves and incomes rise, people of all races and classes lose many of their differences, and many people lose their genuine fears and frustrations." [5]

In this complex picture there are, of course, other major factors that the Commission has not studied directly, particularly questions of discrimination in employment, in the administration of justice, and in public accommodations.[6] A number of the Commission's State advisory committees have studied these subjects. Their importance was made clear by the Commission's own studies in voting, education, and housing. The low income and employment status of a majority of Negroes emerged as a central fact in the discrimination in housing. Negro concern for equal justice is one of the main motivations behind the drive to get the vote, and fairer administration of justice appears to be one of the main fruits of attaining the right to vote. In Atlanta, as a result of a large Negro vote, the following improvements in the administration of justice were reported:

> Negro policemen have been hired. Race-baiting groups such as the Klan and the Columbians have been suppressed. City officials have been more courteous and sensitive to the demands of Negroes. Courtroom decorum has improved. Several Negro deputies have been added to the Fulton County sheriff's offices. For the first time a Negro has been elected to membership on the Atlanta Board of Education. * * * For the first time two Negroes have been elected to the city executive committee.[7]

The problem is seen at its sharpest and worst where all these factors are negative. In Wilcox County, Alabama, for instance, which was one of the counties involved in the Commission's Alabama hearing, Negroes constituted over 70 percent of the voting-age 1950 population but none was registered to vote in early 1959. In that county only some 10 percent of the dwelling units had hot running water and a toilet and were not dilapidated, according to the 1950 Housing Census.[8] On a national average, some 63 percent of all dwelling units meet these standards. In the first 25 counties from which

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[5] Regional Housing Hearings, p. 571.

[6] To get a full picture of civil rights problems, these other subjects would need to be studied on a national scale. The President's Committee on Government Contracts and the President's Committee on Government Employment Policy are both working to secure equal treatment and job opportunity in Federal service and in employment in private industry working on Government contracts. The Commission has been in close touch with both these agencies, but has not attempted to appraise their work. Nor has the Commission studied the question of discrimination in the administration of justice by local or State governments or the policies of the Department of Justice respecting any such discrimination. Nor has it studied discrimination in public accommodations on a local, State, or Federal level. In the limited time available the fields of voting, education, and housing seemed most urgent. But no study of American civil rights could be complete without consideration of these other aspects.

[7] Regional Housing Hearings, p. 589.

[8] The median school years completed by persons over 25 in Wilcox was 5.6 in 1950 compared with the U.S. average of 9.3. The median family income in Wilcox was $655 a year compared with the U.S. median of $3,073. In Wilcox, 86 percent of the families had incomes of less than $2,000.

the Commission received voting complaints the percentage of non-dilapidated dwellings with hot running water and toilet ranged from 10 to 54 percent. In 11 of the 25 counties, fewer than 20 percent of the dwellings met these standards.[9] Twenty-two of the twenty-five fall below 50 percent in this minimum measure of housing quality.[10]

At its worst, the problem involves a massive demoralization of a considerable part of the nonwhite population. This is the legacy of generations of slavery, discrimination, and second-class citizenship. Through the vote, education, better housing, and other improving standards of living, American Negroes have made massive strides up from slavery. But many of them, along with many Puerto Rican, Mexican and oriental Americans, are still being denied equal opportunity to develop their full potential as human beings.

The pace of progress during the 96 years since emancipation has been remarkable. But this is an age of revolutionary change. The colored peoples of Asia and Africa, constituting a majority of the human race, are swiftly coming into their own. The non-colored peoples of the world are now on test. The future peace of the world is at stake.

Moreover, science and technology have opened new realms of freedom. In the present competition with the Soviet Union and world communism the United States cannot afford to lose the potential intelligence and skill of any section of its population.

Equal opportunity and equal justice under law must be achieved in all sections of American public life with all deliberate speed. It is not a court of law alone that tells us this, but also the needs of the Nation in the light of the clear and present dangers and opportunities facing us, and in the light of our restive national conscience. Time is essential in resolving any great and difficult problem, and more time will be required to solve this one. However, it is not time alone that helps, but the constructive use of time.

The whole problem will not be solved without high vision, serious purpose, and imaginative leadership. Prohibiting discrimination in voting, education, housing, or other parts of our public life will not suffice. The demoralization of a part of the nonwhite population resulting from generations of discrimination can ultimately be overcome only by positive measures. The law is not merely a command and government is not just a policeman. Law must be inventive, creative, and educational.

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[9] Alabama: Barbour, Bullock, Wilcox; Louisiana: Bienville, Red River; Mississippi: Bolivar, Clairborne, Jefferson Davis, Sunflower, Tallahatchie; Tennessee: Haywood.

[10] In addition to those listed above, these were: Alabama: Dallas, Macon; Florida: Gadsden; Louisiana; Bossier, Claiborne, DeSoto, Iberia, Jackson, Quachita, Webster; Mississippi: Leflore.

To eliminate discrimination and demoralization, some dramatic and creative intervention by the leaders of our national life is necessary. In the American system much of the action needed should come from private enterprise and voluntary citizens' groups and from local and State governments. If they fail in their responsibilities, the burden falls unduly on the Federal Government.

This Commission would add only one further suggestion. The fundamental cause of prejudice is hidden in the minds and hearts of men. That prejudice will not be cured by concentrating constantly on the discrimination. It may be cured, or reduced, or at least forgotten, if sights can be raised to new and challenging targets. Thus, a curriculum designed to educate young Americans for this unfolding 20th-century world, with better teachers and better schools, will go a long way to facilitate the transition in public education. Equal opportunity in housing will come more readily as part of a great program of urban reconstruction and regeneration. The right to vote will more easily be secured throughout the whole South if there are great issues on which people want to vote.

What is involved here is the ancient warning against the division of society into Two Cities. The Constitution of the United States, which was ordained to establish one society with equal justice under law, stands against such a division. America, which already has come closer to equality of opportunity than probably any other country, must succeed where others have failed. It can do this not only by resolving to end discrimination but also by creating through works of faith in freedom a clear and present vision of the City of Man, the one city of free and equal man envisioned by the Constitution.

PART SIX

GENERAL STATEMENTS BY COMMISSIONERS

GENERAL STATEMENT

I. By Commissioner John S. Battle

I have stated my objections to certain specific recommendations contained in the report.

In addition thereto, and without in any way impugning the motives of any member of the Commission, for each of whom I have the highest regard, I must strongly disagree with the nature and tenor of the report. In my judgment it is not an impartial factual statement, such as I believe to have been the intent of the Congress, but rather, in large part, an argument in advocacy of preconceived ideas in the field of race relations.

II. By Commissioner Theodore M. Hesburgh

I should like to explain my personal position on the basic issues of this report and, especially, on those recommendations which were not unanimous. May I say, at once, how deeply I respect the persons, the convictions, and the judgments of all my distinguished fellow Commissioners, and may I frankly disavow, for myself, any personal claim to ultimate wisdom in these difficult questions of prudential judgment. One can only, in good conscience, do his honest best.

In appraising admittedly thorny situations in the various areas of civil rights examined by the Commission, one must be guided by his own general philosophical and theological convictions. I believe that civil rights were not created, but only recognized and formulated, by our Federal and State constitutions and charters. Civil rights are important corollaries of the great proposition, at the heart of Western civilization, that every human person is a *res sacra*, a sacred reality, and as such is entitled to the opportunity of fulfilling those great human potentials with which God has endowed every man. Without this spiritual and moral concept of the nature and destiny of man, our political philosophy is meaningless, bankrupt, and defenseless in the face of the opposite philosophy of man that stalks the world today.

I begin then with the proposition so well enunciated in our Declaration of Independence, that all men are indeed created equal. Equality, however, is not the same as egalitarianism, for all men are not created

with equal intelligence, equal ambition, equal talent. But all men are entitled to an equal opportunity to exercise and develop whatever intelligence, ambition, and talent they possess. Ultimately, the full flowering of the democratic process depends upon the full development of all the various human talents existing in the Nation.

As I read American history, the unfolding story of our Nation centers about the often agonizing attempt to achieve the fullness of human dignity through the ever-widening application of that equal opportunity which has best characterized America in the family of nations. Deep and often dark emotions have been aroused by the discussion of integration and segregation, but anyone who really understands the majesty of the "American dream" cannot fail to see in our history that equality of opportunity for all men has been our most valid response to the inherent and God-given dignity of every human person.

I firmly believe that if all Americans are given the equal opportunity to be educated to the full extent of their human talents, equal opportunity to work to the fullness of their potential contribution to our society, equal opportunity at least to live in decent housing and in wholesome neighborhoods consonant with their basic human dignity, and, moreover, equal access to housing and neighborhoods as befits their means and social development, and, finally, equal opportunity to participate in the body politic through the free and universal exercise of the franchise, then the problem of civil rights for all Americans will eventually solve itself, to the end that America, and the human dignity of all Americans, will be the richer for this solution.

The growth of equal opportunity on this fourfold front of voting, education, work, and housing is the full and unavoidable price of completely eliminating second-class citizenship across the face of America. The civil rights problem differs, of course, from place to place, but it would be difficult, if not impossible, to find any section of America where all of these equal opportunities flourish in their fullness. And there are localities in America today where not one of these four opportunities exists for nonwhite Americans.

Several myths impede a reasonable approach to a solution. Perhaps the most basic is the myth of white superiority: that any white man is, simply by reason of his being white, superior to any nonwhite man. Apart from the philosophical, theological, and scientific absurdity of this myth, it is best disproved in practice. Deprive any white man, however talented and ambitious, of the equal opportunity to become educated; to work as befits his education, ambition, and talent; to live in a decent house and neighborhood; deprive him of the opportunity of participating in the political process; continue this total depriva-

tion for his children and his children's children, and then see how superior he, his children, and his grandchildren are. On the other hand, open up such equal opportunities to nonwhites and their children, and see how many of them will begin to excel. This is not a distant speculation. It is already happening here and abroad.

A lesser corollary of this myth of white superiority is to say that the nonwhites are not ready for equal opportunity. Yet if nonwhites are to be eternally denied the opportunity, they will never be ready, and the problem becomes eternally insoluble. There must be a beginning to every solution.

No full-fledged solution is possible unless the fourfold equal opportunity mentioned above is considered to be indivisible. If the nonwhite American is granted one equal opportunity—say, education—and then denied the choice of a job and a house commensurate with his education and achievement, the inner core of his motivation for self-improvement is destroyed. If he achieves education, professional status, and the vote—three equal opportunities possible in some sections of America—and still is constrained from living where his heart desires and his means and achievement permit, then the stigma of second-class citizenship is still visited upon him and his family. I see no answer to this total problem unless human judgments and evaluations be made upon the quality, not the pigmentation, of the human person.

No one is so naive as to imagine the complete and overnight realization of equal opportunity on this fourfold front for all Americans. But, on the other hand, no one who really believes in full-fledged citizenship for all Americans should delude himself today regarding the true personal price involved in achieving it. The price will be nothing short of heroism in certain areas. Because of the deep emotional overtones of this problem, and its existence in every phase of American life, no American can escape taking a stand on civil rights. No American can really disengage himself from this problem. Each of us must choose to deepen the anguish of the problem, by silence and passivity, if nothing more, or must take a forthright stand on principles that give some hope of eventual solution.

There have been and will be reasonable differences of opinion regarding the nature and timing of practical solutions. But prudence, patience, good will, honesty, and compassion must be among the ingredients of all hopeful solutions. I pray that our differences of opinion may not divide us, that the basic principles of human dignity may be asserted by all, and that respect for the sacred reality of every human person may be central to all solutions.

Now for the specifics. The Commission's voting recommendation No. 5 (page 141 above), for the appointment of temporary Federal

registrars in cases of voting discrimination, is an attempt to assure qualified voters of equal opportunity to vote in the next Federal election, an opportunity now denied many. I have gone beyond this, together with Chairman Hannah and Commissioner Johnson, to propose an amendment to the Constitution that as a long-range solution would, clearly and simply, assure all Americans the equal opportunity of free and universal suffrage in all elections. The American dream would thus at last become a political reality, and America could then validly proclaim to all the world that we have full faith in the democratic process, without equivocation, chicanery, or subterfuge. To me, this is the final answer to the problems we have studied in the field of voting.

In education, again I have associated myself with Chairman Hannah and Commissioner Johnson in calling for consistency in the three powers of the Federal Government. The judiciary has outlawed compulsory segregation, and yet legislative programs and executive agencies continue to grant millions to institutions of higher learning which in practice disregard the supreme law of the land. Solutions are admittedly more difficult and complicated in the area of elementary and secondary education. But higher education is a mature and sophisticated domain, the birthplace of our future leaders, the alma mater that is ready, I believe, as the Armed Forces were, to grant immediate full opportunity to all Americans who qualify to enter this domain. I favor equal opportunity to obtain Federal educational subsidies that strengthen all our institutions of higher education in this country, both public and private. But the reception of these public funds should be conditioned by the equal opportunity of all the public to enjoy the educational benefits they provide, insofar as any American is qualified educationally, not racially, to enjoy them. Any other arrangement allows the various branches of Government to work at cross-purposes, and places an undue burden on the judiciary alone. Moreover, I am personally convinced that the intelligent and mature leaders of higher education, administrations and faculties alike, are ready for this forthright admission of equal opportunity in this most sensitive segment of our Nation—our colleges and universities, both public and private.

Finally, in the field of housing, perhaps the most difficult of all areas, I have associated myself with Commissioner Johnson in several conclusions beyond those unanimously adopted by the Commission. Again, the use of public money for the benefit of all, equal opportunity, is the cardinal principle. How to do this practically, in a world of admitted prejudice, is the nub of the problem. It does not appear revolutionary to insist that, when the most needy members of our society—those with the presently poorest housing and the lowest

income—are displaced by federally-assisted slum clearance, urban redevelopment, or new highway programs, they be given opportunity to find decent, safe, and sanitary housing elsewhere, within their means, and not be dumped into already overcrowded racial ghettos. It does not seem inconsistent with the testimony we have heard to suggest that local and State laws might lead the way in those communities that pride themselves on equal opportunity. However, it would seem inconsistent with equal opportunity if Federal funds are used in a discriminatory manner, either to confine nonwhite Americans to a certain area of the city, generally less desirable, or to circumscribe Federal assistance in new private housing almost entirely at the whim of builders for white Americans. Also, it seems unfair that federally assisted hospitals and airports have different facilities for different classes of American citizens.

While Federal laws and policies may and should illuminate the ideal of equal civil rights for all Americans, it is fairly obvious, from the varying and nationwide dimensions of the problem, that only State and local leadership, wise and courageous, patient, compassionate, and understanding, will eventually bring the ideal to greater reality throughout our Nation. It is in this sense that legislation alone will not solve the problem, and that ultimate solutions must come, as the President has said, from individual minds and hearts. But law, defining the goals and standards of the community, is itself one of the great changers of minds and hearts. In this democracy, law points the way toward ultimate freedom and justice for all Americans, everywhere in our land. Equality under the law has long been a cherished American ideal. May it ever become, more and more, a proud American reality.

III. By Commissioner George M. Johnson

While my service as a member of the Commission has been relatively short, I have been involved in its studies from the beginning as Director of the Office of Laws, Plans, and Research. Some of the points I make in this supplementary statement arise from my desire to make the Commission's recommendations more fully responsive to the findings of those studies. It is our duty to recommend measures that are equal to the problems disclosed by our factfinding. I would like to have had more time to discuss some of these points further with my fellow Commission members. I respect the judgment of each of them even though I may disagree on certain matters of principle and timing.

The problems which Congress assigned to this Commission for investigation, study, and appraisal relate generally to the American

constitutional promise of equal justice under law for all citizens. Implicit in this promise is the democratic goal of equal opportunity for all citizens. Under our Constitution the power and responsibility to implement and fulfill the constitutional promise and the goal are shared by the Federal Government, State and local governments, and the people. This Commission was asked by the Congress to study and appraise the Federal Government's role in exercising its power and discharging its responsibilities in this regard.

A crucial element in such a study and appraisal is the extent to which the Federal Government may be found to be participating, directly or indirectly, in activities contrary to the goal of equal opportunity. The elimination of all Federal policies and practices falling in this category is, in my view, a matter of prime importance and requires immediate remedial action by the executive and legislative branches of the Federal Government.

Prompt and effective measures to eliminate such practices should be undertaken even though some of us may be inconvenienced temporarily. For this reason I have recommended the withholding of Federal funds in aid of education at the primary and secondary levels, as well as those in aid of higher education, wherever the policies and practices of the institutions involved are not in accord with the constitutional principle of equal protection of the laws. Since 1954, compulsory racial segregation in public schools has been unconstitutional. It is time to require as a condition of further Federal assistance to any non-complying school or school district that there be some indication of good faith compliance with the constitutional requirement of desegregation with all deliberate speed.

The achievement of equal justice under the law and equality of opportunity should not be left to the Federal judiciary. The legislative and executive branches of the Federal Government also have basic responsibilities to secure and protect the constitutional rights of all citizens. The public interest is not best served if private citizens and organizations are left to vindicate constitutional rights of national significance through litigation in the Federal courts. The development of public law should not be left primarily to private litigation.

The void created by inaction on the part of the legislative and executive branches of the Federal Government must be filled with positive and constructive measures designed to remove from all Federal policies and practices any semblance of inconsistency with the mandate of the Constitution. Where necessary, laws should be enacted to accomplish this result.

Experience has demonstrated that laws are necessary to implement fundamental constitutional principles, and that they are effective in areas of intergroup conflict. Laws restrain those few who will not re-

spect the rights of others. They also have an educative value for the community as a whole. In this way laws help to change the hearts and minds of men by changing some of their practices and by keeping them ever mindful of the goals toward which a free people dedicated to equal justice under law and equal opportunity for all citizens must strive.

Accordingly, in my view there is great merit in the often proposed legislation to broaden the powers of the Attorney General to seek injunctive relief in civil rights matters. Such legislation would provide the executive branch of the Federal Government with additional power to correct flagrant abuses of the rights of some American citizens. Unfortunately, the shortness of time and the pressure of its activities precluded the Commission from exploring the need for such legislation. However, my appraisal of the areas of study selected by the Commission, and particularly of the problem of effecting school desegregation, has convinced me of the necessity for and the efficacy of such legislation.

While I believe that laws consistently and effectively enforced are necessary to secure and protect the civil rights of some American citizens, they constitute only a portion of what is required if equal justice and equal opportunity are to be attained throughout this Nation. There is as great a need for leadership.

Neither in their enactment nor in their enforcement will laws, of themselves, provide real and lasting solutions of the most controversial problems of civil rights facing this Nation. The need is for enlightened and constructive leadership capable of devising practical programs consonant with constitutional principles and of rallying the American people to the cause of justice for all citizens.

The Federal Government should take the lead in this task. It should seek to bring together leaders of both races who in good faith could explore ways and means to reduce tensions, create better understanding, increase respect for law and order, and organize the resources of the Nation in a concerted effort to eradicate within the foreseeable future inequalities based on race, color, religion, or national origin. I know that within our Nation such leadership exists and that when marshaled and fully utilized it will be capable of meeting the present crisis in civil rights.

Finally, I would say that, while none of us has the solutions of these complex problems, by approaching them with moral conviction and resolute courage we can take the necessary and proper steps towards full realization of the goal of equal justice under law and equal opportunity for all.

APPENDIX

VOTING STATISTICS

In the following tables, No. 25 through No. 36, it should be noted that population statistics are from the 1950 Census, whereas considerably later figures are used for registration.

TABLE 25

Arkansas Registration Statistics

County	Total population 1950	White population over 21 1950	Whites registered 1958	Percent White population over 21 registered	Nonwhite population over 21 1950	Nonwhites registered 1958	Percent nonwhite population over 21 registered
Arkansas*	23,665	10,810	7,308	67.9	2,934	700	23.9
Ashley	25,660	8,980	6,868	76.4	5,062	1,182	23.4
Baxter	11,683	6,811	3,597	52.8	3	0	0
Benton	38,076	23,957	12,284	51.3	43	25	58.1
Boone	16,260	10,133	5,869	57.9	0	0	0
Bradley	15,987	6,468	4,443	68.7	2,744	1,123	40.9
Calhoun*	7,132	2,844	2,607	91.7	1,277	300	23.5
Carroll	13,244	8,354	4,195	50.2	13	0	0
Chicot	22,306	5,639	3,761	66.7	6,924	2,525	36.5
Clark	22,998	10,043	5,872	58.4	3,228	1,211	37.5
Clay	26,674	14,800	5,337	36.1	6	0	0
Cleburne	11,487	6,668	2,839	42.6	2	0	0
Cleveland	8,956	3,831	2,536	66.2	1,061	350	32.9
Columbia	28,770	10,801	6,534	60.5	5,603	1,010	18.0
Conway	18,137	8,018	6,189	77.2	2,196	1,396	63.6
Craighead	50,613	27,255	13,929	51.1	998	310	31.1
Crawford	22,727	12,779	6,489	50.8	414	95	22.9
Crittenden	47,184	8,502	5,778	68.0	16,495	1,145	6.9
Cross	24,757	8,965	4,036	45.0	4,041	606	15.0
Dallas	12,416	4,642	3,240	69.8	2,504	1,028	41.1
Desha	25,155	7,073	4,693	66.4	6,511	2,159	33.2
Drew*	17,959	6,940	4,500	64.8	3,118	500	16.0
Faulkner	25,289	13,137	8,767	66.7	1,480	456	30.8
Franklin	12,358	7,285	4,518	62.0	91	29	31.9
Fulton	9,187	5,383	2,647	49.2	5	0	0
Garland*	47,102	27,227	16,647	61.1	3,751	700	18.7
Grant	9,024	4,866	3,479	71.4	370	186	50.3
Greene	29,149	16,451	8,134	49.4	40	10	25.0
Hempstead*	25,080	9,443	5,884	62.3	5,244	1,150	21.9
Hot Spring	22,181	11,297	8,559	75.8	1,575	300	19.0
Howard*	13,342	6,604	3,852	58.3	1,406	260	18.5
Independence*	23,488	13,675	6,787	49.6	407	75	18.4
Izard*	9,953	5,744	2,910	50.7	62	23	37.1
Jackson	25,912	12,169	6,553	53.8	2,067	815	39.4
Jefferson	76,075	23,591	15,308	64.9	21,174	5,662	26.7
Johnson	16,138	9,607	4,877	50.8	144	15	10.4
Lafayette	13,203	4,363	2,725	62.5	3,004	1,105	36.8
Lawrence*	21,303	11,632	5,506	47.3	164	30	18.3
Lee	24,322	5,213	2,805	53.8	7,572	1,366	18.0
Lincoln	17,079	4,521	2,569	56.8	4,808	1,302	27.1
Little River*	11,690	4,554	3,230	70.9	2,107	500	23.7
Logan*	20,260	12,215	5,996	49.1	209	45	21.5
Lonoke	27,278	11,857	6,597	55.6	3,267	1,158	35.4
Madison	11,734	6,643	3,645	54.9	9	0	0

See footnotes at end of table.

VOTING STATISTICS

TABLE 25—Continued

Arkansas Registration Statistics—Continued

County	Total Population 1950	White population over 21 1950	Whites registered 1958	Percent White population over 21 registered	Nonwhite population over 21 1950	Nonwhites registered 1958	Percent nonwhite population over 21 registered
Marion	8,609	5,007	2,792	55.8	0	0	0
Miller	32,614	14,432	9,172	63.6	5,000	1,568	31.4
Mississippi	82,375	30,738	12,919	42.0	11,975	3,922	32.8
Monroe	19,540	5,685	3,453	60.7	4,930	936	18.9
Montgomery	6,680	3,903	2,625	67.3	24	0	0
Nevada	14,781	5,970	3,285	55.0	2,578	736	28.5
Newton	8,685	4,509	2,465	54.7	1	0	0
Ouachita	33,051	12,001	7,401	61.7	7,020	4,020	57.3
Perry	5,978	3,298	2,117	64.2	133	30	22.6
Phillips	46,254	10,503	5,900	56.2	15,226	3,612	23.7
Pike	10,032	5,596	3,139	56.1	294	103	35.0
Poinsett*	39,311	18,029	8,653	48.0	1,754	350	19.9
Polk	14,182	8,470	4,803	55.0	9	0	0
Pope	23,291	13,369	6,969	52.1	426	90	21.1
Prairie*	13,768	6,485	3,632	56.0	1,192	200	16.8
Pulaski	196,685	99,294	61,771	62.3	28,881	10,419	36.1
Randolph*	15,982	8,965	4,403	49.1	102	25	24.5
St. Francis	36,841	8,632	5,262	61.0	10,734	1,900	17.7
Saline*	23,816	14,202	9,328	65.7	974	87	8.9
Scott*	10,057	5,782	3,230	55.9	94	45	47.9
Searcy	10,424	5,908	2,766	46.8	3	0	0
Sebastian	64,202	37,821	20,209	53.4	2,678	836	31.2
Sevier	12,293	6,784	3,205	47.2	610	201	32.9
Sharp	8,999	5,199	2,823	54.3	5	0	0
Stone	7,662	4,249	2,770	65.2	3	0	0
Union	49,686	21,778	15,158	69.6	8,434	2,770	32.8
Van Buren*	9,687	5,570	3,280	58.9	59	20	33.9
Washington	49,979	31,044	13,921	44.8	309	12	3.9
White	38,040	21,117	9,480	44.9	726	300	41.3
Woodruff	18,957	6,423	3,224	50.2	3,549	916	25.8
Yell	14,057	8,122	4,902	60.4	335	73	21.8
Total	1,909,511	880,675	499,955	56.8	227,691	64,023	28.1

* Registration figures are estimates by State Auditor in absence of up-to-date report from county.

Population figures are from Bureau of Census, 1950. Arkansas has no "registration" as such. Registration figures from counties not starred represent poll tax payments as reported by the State Auditor.

TABLE 26

Florida Registration Statistics

County	Total population 1950	White population over 21 1950	Whites registered 1958	Percent white population over 21 registered	Non-white population over 21 1950	Non-whites registered 1958	Percent nonwhite population over 21 registered
Alachua	57,026	27,176	13,433	49.4	9,430	2,169	23.0
Baker	6,313	2,481	3,423	100.0	818	397	48.5
Bay	42,689	21,138	19,159	90.6	4,028	1,904	47.3
Bradford	11,457	4,883	4,535	92.9	1,408	770	54.7
Brevard	23,653	12,466	19,272	100.0	3,544	1,747	49.3
Broward	83,933	44,558	84,997	100.0	12,234	7,607	62.2
Calhoun	7,922	3,623	4,038	100.0	594	265	44.6
Charlotte	4,286	2,534	3,895	100.0	462	273	59.1
Citrus	6,111	2,975	3,576	100.0	879	400	45.5
Clay	14,323	7,226	5,402	74.8	1,230	910	73.9
Collier	6,488	2,688	4,164	100.0	1,402	327	23.3
Columbia	18,216	7,198	5,250	72.9	3,357	971	28.9
Dade	495,084	313,924	337,838	100.0	42,682	20,785	48.7
De Soto	9,242	4,965	3,995	80.5	1,229	915	74.5
Dixie	3,928	1,814	1,948	100.0	307	70	18.1
Duval	304,029	145,484	105,652	72.6	52,832	26,453	50.1
Escambia	112,706	52,167	51,956	99.6	14,521	8,077	55.6
Flagler	3,367	1,267	1,532	100.0	872	19	2.2
Franklin	5,814	2,492	2,897	100.0	904	523	57.9
Gadsden	36,457	11,183	6,310	56.4	10,930	7	.6
Gilchrist	3,499	1,695	1,670	98.5	203	34	16.7
Glades	2,199	771	735	95.3	584	146	25.0
Gulf	7,460	3,070	3,234	100.0	1,129	502	44.5
Hamilton	3,981	2,893	3,805	100.0	1,983	512	25.8
Hardee	10,073	5,764	4,303	74.7	404	292	72.3
Hendry	6,051	2,625	2,339	89.1	1,034	563	54.4
Hernando	6,693	3,301	3,248	100.0	869	486	55.9
Highlands	13,636	6,542	8,922	100.0	2,054	934	45.5
Hillsborough	249,894	140,750	105,116	74.7	24,941	9,822	39.4
Holmes	13,988	7,219	6,698	92.8	326	140	42.9
Indian River	11,872	5,776	6,708	100.0	1,764	521	29.5
Jackson	34,645	12,994	9,440	72.6	5,843	2,090	35.8
Jefferson	10,413	2,395	3,038	100.0	3,272	432	13.2
Lafayette	3,440	1,701	1,902	100.0	176	0	0
Lake	36,340	18,360	16,362	89.1	5,110	1,363	26.7
Lee	23,404	12,506	14,359	100.0	3,017	1,132	37.5
Leon	51,590	19,281	15,054	78.1	11,213	4,089	36.5
Levy	10,637	4,200	5,139	100.0	2,107	413	19.6
Liberty	3,182	1,452	1,706	100.0	333	0	0
Madison	14,197	4,480	3,617	80.7	3,151	953	30.2
Manatee	34,704	18,836	17,293	91.8	4,425	914	20.7
Marion	38,187	15,261	12,018	78.7	8,387	3,004	35.8
Martin	7,807	3,972	5,450	100.0	1,374	615	44.7
Monroe	29,957	17,117	9,856	57.6	2,043	1,648	80.7
Nassau	12,811	5,078	5,041	99.3	2,123	1,263	59.5
Okaloosa	27,533	14,396	15,321	100.0	1,177	684	58.1
Okeechobee	3,454	1,686	2,147	100.0	406	367	90.4
Orange	114,950	63,527	56,358	88.7	14,321	3,146	21.9
Osceola	11,406	7,214	7,102	98.4	958	354	36.9
Palm Beach	114,688	57,518	67,009	100.0	22,253	6,291	28.3
Pasco	20,529	11,528	13,097	100.0	1,713	670	39.1
Pinellas	159,249	108,183	134,223	100.0	12,118	4,610	38.0

See footnotes at end of table.

TABLE 26—Continued

Florida Registration Statistics—Continued

County	Total population 1950	White population over 21 over 21	Whites registered 1958	Percent White population over 21 registered	Nonwhite population over 21 1950	Nonwhites registered 1958	Percent nonwhite population over 21 registered
Polk	123,997	62,211	55,761	89.6	15,492	5,599	36.1
Putnam	23,615	9,463	10,979	100.0	5,199	1,821	35.0
St. Johns	24,998	11,007	10,605	96.3	5,053	2,170	42.9
St. Lucie	20,180	9,073	11,179	100.0	3,732	1,893	50.7
Santa Rosa	18,554	9,259	10,390	100.0	928	749	80.7
Sarasota	28,827	17,520	20,915	100.0	2,896	683	23.6
Seminole	26,883	9,892	9,529	96.3	6,881	1,581	22.9
Sumter	11,330	5,044	4,216	83.6	1,703	574	33.7
Suwannee	16,986	6,769	5,312	78.5	2,606	397	15.2
Taylor	10,416	4,142	4,483	100.0	1,945	67	3.4
Union	8,906	3,842	2,598	67.6	2,435	0	0
Volusia	74,229	41,392	43,350	100.0	10,415	4,856	46.6
Wakulla	5,258	2,021	2,601	100.0	833	393	47.1
Walton	14,725	7,310	5,479	74.9	1,051	710	67.6
Washington	11,888	5,438	5,564	100.0	1,056	738	69.9
Total	2,766,305	1,458,716	1,448,543	99.4	366,797	144,861	39.5

Population figures are from Bureau of Census, 1950.

Registration figures are from Secretary of State of Florida, published regularly.

Population shifts, in migration, changes in age of population, or failure to strike the names of deceased or departed registrants have resulted in percentage calculations in excess of 100 "registered" in some counties. In such cases 100 percent is shown.

TABLE 27

Additional Florida Registration Statistics—for past years

County	Total population 1950	Negro population 1950	Negro registrants						
			1946	1948	1950	1952	1954	1956	1958
Alachua	57,026	16,551	1,192	1,964	2,152	2,519	2,829	3,153	2,169
Baker	6,313	1,546	32	103	97	113	186	361	397
Bay	42,689	7,165	525	1,770	1,194	2,207	2,434	2,012	1,904
Bradford	11,457	2,800	308	480	232	508	682	859	770
Brevard	23,653	6,001	608	780	1,805	2,042	1,780	2,160	1,747
Broward	83,933	21,359	685	1,825	2,200	3,542	4,720	6,958	7,607
Calhoun	7,922	1,119	2	36	0	58	130	231	265
Charlotte	4,286	672	231	194	194	178	240	268	273
Citrus	6,111	1,555	31	327	213	496	485	580	400
Clay	14,323	2,105	224	750	764	843	843	1,193	910
Collier	6,488	1,986	17	9	9	130	523	741	327
Columbia	18,216	6,124	171	223	338	745	966	1,645	971
Dade	495,084	65,392	5,310	7,666	15,510	18,580	20,155	19,048	20,785
DeSoto	9,242	2,002	475	655	760	751	738	807	915
Dixie	3,928	562	58	128	133	241	91	181	70
Duval	304,029	81,840	12,420	14,685	25,717	21,350	25,969	27,368	26,453
Escambia	112,706	25,123	2,467	4,704	6,210	5,769	6,627	6,733	8,077
Flagler	3,367	1,534	5	5	2	2	10	13	19

See footnotes at end of table.

TABLE 27—Continued

Additional Florida Registration Statistics—for past years—Continued

County	Total population 1950	Negro population 1950	Negro registrants						
			1946	1948	1950	1952	1954	1956	1958
Franklin	5,814	1,496	250	503	185	356	311	521	523
Gadsden	36,457	20,468	32	137	140	6	8	5	7
Gilchrist	3,499	346	11	10	8	10	11	29	34
Glades	2,199	898	28	172	209	262	261	262	146
Gulf	7,460	2,007	45	142	170	250	415	481	502
Hamilton	3,981	3,790	40	50	55	170	217	507	512
Hardee	10,073	750	12	187	210	280	282	375	292
Hendry	6,051	1,580	2	0	92	324	538	135	563
Hernando	6,693	1,539	90	235	216	396	467	622	486
Highlands	13,636	3,466	535	1,277	1,230	1,111	1,279	1,243	2,169
Hillsborough	249,894	38,315	2,177	6,660	7,959	5,772	5,103	8,856	9,822
Holmes	13,988	609	109	114	122	156	137	130	140
Indian River	11,872	2,962	45	119	232	276	294	427	512
Jackson	34,645	11,574	768	1,557	1,888	2,179	2,847	3,430	2,090
Jefferson	10,413	6,513	147	174	76	125	155	183	432
Lafayette	3,440	325	0	0	0	0	0	0	0
Lake	36,340	8,542	240	802	916	1,327	1,586	1,363	1,363
Lee	23,404	4,694	342	1,243	1,348	1,401	1,473	1,818	1,132
Leon	51,590	20,381	508	2,266	2,745	3,708	3,735	4,046	4,089
Levy	10,637	3,603	87	233	174	472	256	603	413
Liberty	3,182	581	0	0	0	0	0	1	0
Madison	14,197	6,477	0	0	0	0	681	1,010	953
Manatee	34,704	7,916	365	677	997	1,031	1,250	1,686	914
Marion	38,187	14,594	1,389	2,888	3,460	3,891	3,979	4,324	3,004
Martin	7,807	2,203	94	162	315	551	522	706	615
Monroe	29,957	3,221	497	827	902	1,239	1,218	1,652	1,648
Nassau	12,811	4,007	631	654	781	921	964	1,223	1,263
Okaloosa	27,533	2,198	24	195	321	306	413	606	684
Okeechobee	3,454	641	63	261	278	368	266	348	367
Orange	114,950	22,766	1,490	1,934	3,938	2,541	2,744	3,137	3,146
Osceola	11,406	1,492	130	344	203	296	244	358	354
Palm Beach	114,688	34,797	2,416	4,051	5,185	5,205	5,879	6,120	6,291
Pasco	20,529	2,776	160	327	364	651	637	624	670
Pinellas	159,249	18,712	1,514	2,963	3,244	3,673	3,524	3,477	3,610
Polk	123,997	25,577	1,888	3,478	4,478	3,935	3,710	4,989	5,599
Putnam	23,615	8,608	334	1,510	1,067	1,302	1,394	1,770	1,821
St. Johns	24,998	8,327	1,348	1,911	2,107	2,289	2,518	2,051	2,170
St. Lucie	20,180	6,394	406	954	1,158	1,648	1,482	1,813	1,893
Santa Rosa	18,554	1,584	4	92	155	516	628	730	749
Sarasota	28,827	4,611	465	574	711	586	725	783	683
Seminole	26,883	11,940	867	1,768	2,702	3,248	1,643	2,242	1,581
Sumter	11,330	3,052	112	209	184	480	559	790	574
Suwannee	16,986	4,985	248	238	309	381	475	565	397
Taylor	10,416	3,181	110	107	113	109	108	91	67
Union	8,906	3,231	0	1	0	0	0	0	0
Volusia	74,229	16,385	2,847	5,673	5,749	5,435	4,485	5,761	4,856
Wakulla	5,258.	1,627	2	65	31	121	144	345	393
Walton	14,725	1,958	303	558	564	725	819	954	710
Washington	11,888	2,119	204	624	594	810	611	733	738
Total	2,766,305	605,246	48,141	85,230	115,415	120,913	130,405	148,236	145,036

Population figures are from U.S. Census, 1950.
Registration figures are from Florida Secretary of State, published regularly.

TABLE 28

Georgia Registration Statistics

County	Total population 1950	1950 whites over 18 (est.)	Whites registered 1958	Percent whites over 18 registered	1950 nonwhites over 18 (est.)	1958 nonwhites registered	Percent nonwhites over 18 registered
Appling	14,003	6,296	6,612	100	1,361	1,140	83.8
Atkinson	7,362	3,139	4,168	100	897	797	88.9
Bacon	8,940	4,428	6,105	100	555	22	4.0
Baker	5,942	1,362	1,670	100	1,817	0	0
Baldwin	29,706	14,479	7,675	53.0	8,450	2,618	31.0
Banks	6,935	3,882	4,420	100	228	44	19.3
Barrow	13,115	7,205	5,848	81.2	1,303	312	23.9
Bartow	27,370	14,226	11,239	79.0	3,394	1,208	35.6
Ben Hill	14,879	6,481	3,797	58.6	2,655	930	35.0
Berrien	13,966	6,985	4,177	59.8	1,106	403	36.4
Bibb	114,079	50,674	26,124	51.6	25,993	4,913	18.9
Bleckley	9,218	3,865	3,346	86.6	1,588	45	2.8
Brantley	6,387	3,051	3,767	100	465	226	48.6
Brooks	18,169	5,755	4,321	75.1	4,675	695	14.9
Bryan	5,965	2,156	1,972	91.5	1,267	817	64.5
Bulloch	24,740	9,553	7,897	82.7	4,752	1,390	29.3
Burke	23,458	4,592	3,664	79.8	8,782	427	4.9
Butts	9,079	3,288	3,810	100	2,161	1,437	66.5
Calhoun	8,578	1,812	1,682	92.8	3,221	132	4.1
Camden	7,322	2,247	2,606	100	2,053	1,385	67.5
Candler	8,063	3,233	3,195	98.8	1,480	1,174	79.3
Carroll	34,112	17,861	13,680	76.6	3,585	925	25.8
Catoosa	15,146	9,008	9,938	100	181	70	38.7
Charlton	4,821	2,009	2,293	100	775	40	5.2
Chatham	151,481	63,849	36,943	57.9	38,310	9,250	24.1
Chattahoochee	12,149	7,594	284	3.7	1,431	8	0.55
Chattooga	21,197	12,008	11,250	93.7	1,027	1,011	98.4
Cherokee	20,750	12,361	12,874	100	474	195	41.1
Clarke	36,550	19,618	14,255	72.7	6,210	3,136	50.5
Clay	5,844	1,224	1,013	82.8	2,151	94	4.4
Clayton	22,872	12,258	11,441	93.3	2,075	477	23.0
Clinch	6,007	2,305	2,429	100	1,216	319	26.2
Cobb	61,830	35,297	28,134	79.7	3,929	1,908	48.6
Coffee	23,961	10,517	10,058	95.6	3,137	942	30.0
Colquitt	33,999	15,685	13,000	82.9	4,393	965	22.0
Columbia	9,525	3,171	3,423	100	2,446	510	20.9
Cook	12,201	5,261	6,000	100	1,846	500	27.1
Coweta	27,786	11,517	11,597	100	5,776	1,647	28.5
Crawford	6,080	1,647	1,496	90.8	1,798	155	8.6
Crisp	17,663	6,368	4,785	75.1	4,383	721	16.4
Dade	7,364	4,087	3,678	90.0	71	40	56.3
Dawson	3,712	2,152	2,172	100	0	0	0
Decatur	23,620	7,853	7,530	95.9	6,209	960	15.5
De Kalb	136,395	85,764	64,450	75.1	8,678	2,153	24.8
Dodge	17,865	7,657	8,728	100	2,855	2,028	71.0
Dooly	14,159	4,203	4,252	100	3,871	722	18.7
Dougherty	43,617	16,893	10,815	64.0	11,747	2,628	22.4
Douglas	12,173	6,289	6,946	100	1,040	832	80.0
Early	17,413	5,045	4,335	85.9	4,774	226	4.7
Echols	2,494	990	804	81.2	379	15	4.0
Effingham	9,133	3,510	2,618	74.6	1,828	188	10.3
Elbert	18,585	8,120	9,012	100	3,376	1,104	32.7
Emanuel	19,789	7,932	7,252	91.4	3,586	1,762	49.1
Evans	6,653	2,600	2,206	84.8	1,340	483	36.0
Fannin	15,192	8,635	8,503	98.5	47	19	40.4

See footnotes at end of table.

TABLE 28—Continued

Georgia Registration Statistics—Continued

County	Total population 1950	1950 whites over 18 (est.)	Whites registered 1958	Percent whites over 18 registered	1950 nonwhites over 18 (est.)	1958 nonwhites registered	Percent nonwhites over 18 registered
Fayette	7,978	3,387	3,402	100	1,255	25	2.0
Floyd	62,899	35,231	19,244	54.6	6,059	1,523	25.1
Forsyth	11,005	6,448	4,148	64.3	25	0	0
Franklin	14,446	7,880	5,500	69.8	968	300	31.0
Fulton	473,572	237,042	104,877	44.2	99,307	28,414	28.6
Gilmer	9,963	5,746	4,454	77.5	13	6	46.2
Glascock	3,579	1,589	1,339	84.3	464	19	4.1
Glynn	29,046	12,695	7,425	58.5	6,077	2,039	33.6
Gordon	18,922	10,019	*7,130	71.2	636	*527	82.9
Grady	18,928	7,788	5,076	65.2	3,428	831	24.2
Greene	12,843	4,162	5,053	100	3,541	2,728	77.0
Gwinnett	32,320	18,333	16,498	90.0	1,745	1,002	57.4
Habersham	16,553	9,741	8,223	84.4	380	200	52.6
Hall	40,113	22,949	17,542	76.4	2,344	1,209	51.6
Hancock	11,052	2,056	2,064	100	4,076	1,730	42.4
Haralson	14,663	8,280	11,443	100	715	751	100.0
Harris	11,265	3,277	3,635	100	3,665	215	5.9
Hart	14,495	6,852	5,944	86.7	1,800	294	16.3
Heard	6,975	3,145	2,475	78.7	868	374	43.1
Henry	15,857	5,802	5,449	93.9	3,659	1,662	45.4
Houston	20,964	8,764	*6,943	79.2	3,821	*443	11.6
Irwin	11,973	4,450	4,500	100	2,162	700	32.4
Jackson	18,997	10,040	7,209	71.8	1,565	450	28.8
Jasper	7,473	2,231	2,530	100	2,307	804	34.9
Jeff Davis	9,299	4,099	6,130	100	1,040	56	5.4
Jefferson	18,855	5,162	4,120	79.8	5,560	264	4.7
Jenkins	10,264	2,998	2,502	83.5	2,899	694	23.9
Johnson	9,893	4,030	3,655	90.7	1,695	268	15.8
Jones	7,538	2,237	2,048	91.6	2,209	611	27.7
Lamar	10,242	4,059	2,801	69.0	2,227	899	40.4
Lanier	5,151	2,102	1,892	90.0	920	452	49.1
Laurens	33,123	12,587	13,218	100	7,285	3,507	48.1
Lee	6,674	1,179	1,281	100	2,544	29	1.1
Liberty	8,444	1,954	2,128	100	2,822	2,472	87.6
Lincoln	6,462	2,179	2,437	100	1,571	3	0.2
Long	3,598	1,377	*2,201	100	1,693	*1,061	62.7
Lowndes	35,211	13,519	11,860	87.7	8,354	2,704	32.4
Lumpkin	6,574	3,833	3,912	100	81	83	100
McDuffie	11,443	4,087	4,089	100	2,915	379	13.0
McIntosh	6,008	1,460	1,396	95.6	2,045	1,219	59.6
Macon	14,213	3,126	3,024	96.7	4,815	178	3.7
Madison	12,238	6,213	4,588	73.8	1,161	55	4.7
Marion	6,521	1,599	1,330	83.2	1,866	52	2.8
Meriwether	21,055	6,749	5,457	80.9	5,715	927	16.2
Miller	9,023	3,728	3,357	90.0	1,371	6	.43
Mitchell	22,528	6,793	7,298	100	5,951	375	6.3
Monroe	10,523	3,442	3,333	96.8	2,874	753	26.2
Montgomery	7,901	2,911	3,315	100	1,609	1,005	62.5
Morgan	11,899	3,555	2,615	73.6	3,263	738	22.6
Murray	10,676	6,027	4,962	82.3	93	35	37.6
Muscogee	118,028	58,554	22,859	39.0	20,009	3,729	18.6
Newton	20,185	8,720	9,058	100	3,868	1,905	49.3
Oconee	7,009	3,342	3,224	96.5	925	372	40.2
Oglethorpe	9,958	3,540	2,958	83.6	2,176	199	9.1
Paulding	11,752	6,500	7,851	100	600	435	72.5
Peach	11,705	3,048	2,539	83.3	4,235	679	16.0

See footnotes at end of table.

TABLE 28—Continued

Georgia Registration Statistics—Continued

County	Total population 1950	1950 whites over 18 (est.)	Whites registered 1958	Percent whites over 18 registered	1950 nonwhites over 18 (est.)	1958 nonwhites registered	Percent nonwhites over 18 registered
Pickens	8,855	5,182	4,393	84.8	255	101	39.6
Pierce	11,112	4,831	3,388	70.1	1,289	381	29.6
Pike	8,459	2,958	2,520	85.2	1,912	496	25.9
Polk	30,976	10,158	9,852	97.0	2,787	1,154	41.4
Pulaski	8,808	2,808	2,853	100	2,360	235	10.0
Putnam	7,731	2,264	2,366	100	2,300	570	24.8
Quitman	3,015	643	721	100	994	43	4.3
Rabun	7,424	4,278	4,867	100	70	11	15.7
Randolph	13,804	3,233	2,585	80.0	4,950	493	10.0
Richmond	108,876	50,658	23,260	45.9	23,683	5,820	24.6
Rockdale	8,464	3,825	3,501	91.5	1,310	563	43.0
Schley	4,036	1,094	1,006	92.0	1,177	158	13.4
Screven	18,000	4,992	3,027	60.6	5,132	335	6.5
Seminole	7,904	2,927	3,172	100	1,631	29	1.9
Spalding	31,045	15,060	----------	----------	5,077	*1,151	22.7
Stephens	16,647	9,277	8,242	88.8	1,268	627	49.4
Stewart	9,194	1,734	1,555	89.7	3,438	107	3.1
Sumter	24,208	7,430	5,164	69.5	7,403	483	6.5
Talbot	7,687	1,519	1,448	95.3	2,750	219	8.0
Taliaferro	4,515	1,087	913	84.0	1,560	756	48.5
Tattnall	15,939	7,465	8,224	100	2,383	1,680	70.5
Taylor	9,113	3,058	3,103	100	2,229	347	15.6
Telfair	13,221	5,554	7,389	100	2,374	169	7.1
Terrell	14,314	3,233	2,810	86.9	5,036	48	.95
Thomas	33,932	13,290	8,422	63.4	8,226	1,579	19.2
Tift	22,645	10,039	6,681	66.6	3,592	1,113	31.0
Toombs	17,382	7,615	5,543	72.8	2,636	170	6.4
Towns	4,803	2,818	----------	----------	3	0	0
Treutlen	6,522	2,735	*3,541	100	1,038	18	1.7
Troup	49,841	21,936	13,836	63.1	9,398	2,104	22.4
Turner	10,479	3,112	3,893	100	1,996	474	23.7
Twiggs	8,308	2,027	2,517	100	2,583	348	13.5
Union	7,318	4,245	4,944	100	0	0	----------
Upson	25,078	11,698	5,437	46.5	3,827	466	12.2
Walker	38,198	22,463	23,324	100	1,401	1,127	80.4
Walton	20,230	9,024	6,873	76.2	3,199	805	25.2
Ware	30,289	13,940	11,418	81.9	4,495	2,318	51.6
Warren	8,799	2,152	2,006	93.2	2,823	195	6.9
Washington	21,012	8,934	6,696	74.9	6,389	1,704	26.7
Wayne	14,248	6,659	7,931	100	1,649	1,439	87.3
Webster	4,081	949	934	98.4	1,296	0	0
Wheeler	6,712	2,808	3,157	100	1,084	435	40.1
White	5,951	3,296	3,932	100	193	189	97.9
Whitfield	34,432	20,291	15,920	78.5	864	857	99.2
Wilcox	10,167	4,003	3,059	76.4	1,836	230	12.5
Wilkes	12,388	3,634	3,364	92.6	3,724	290	7.8
Wilkinson	9,781	3,260	3,041	93.3	2,619	411	15.7
Worth	19,357	5,975	5,855	98.0	4,802	296	6.2
Total	3,444,578	1,554,784	1,130,515	72.7	623,458	161,082	25.8

Population figures are from Bureau of the Census, 1950.

Registration figures are from official county reports released by Secretary of State Ben Fortson, published in *Atlanta Constitution*, Sept. 29, 1958.

Population shifts, changes in age of population, or failure to strike the names of deceased or departed registrants have resulted in percentage calculations in excess of 100 percent "registered" in some counties. In such cases 100 percent is shown.

* From these counties, 1956 reports were latest available.

TABLE 29

Louisiana Registration Statistics

Parish	Total population 1950	White population over 21 1950	Whites registered October 1956	Whites registered 1959	Percent white population over 21 registered October 1956	Percent white population over 21 registered 1959	Nonwhite population over 21 1950	Nonwhites registered October 1956	Nonwhites registered 1959	Percent nonwhites over 21 registered October 1956	Percent nonwhites over 21 registered 1959
Acadia*	47,050	21,237	18,060	18,492	85.0	87.1	4,369	3,264	3,500	74.7	80.1
Allen*	18,835	8,090	7,787	7,135	96.3	88.2	2,353	1,821	1,766	77.4	75.0
Ascension*	22,387	8,172	7,416	7,522	90.7	92.0	4,109	1,926	1,980	46.9	48.1
Assumption*	17,278	5,751	4,730	4,791	82.3	83.3	3,481	2,002	1,993	57.5	57.2
Avoyelles*	38,031	16,223	13,686	13,549	84.4	83.5	4,738	2,029	1,852	42.8	39.0
Beauregard*	17,766	8,402	7,187	6,851	85.5	81.5	1,734	1,068	1,040	61.5	59.9
Bienville*	19,105	6,123	5,282	4,693	86.3	76.6	4,478	35	27	.7	.6
Bossier*	40,139	15,768	9,313	10,052	59.1	63.7	6,974	502	483	7.2	6.9
Caddo*	176,547	73,073	49,115	51,567	67.2	70.5	37,772	3,615	4,582	9.5	12.1
Calcasieu*	89,635	40,930	34,057	36,333	83.2	88.7	11,408	6,036	6,449	52.9	56.5
Caldwell	10,293	4,309	3,863	2,735	89.6	63.4	1,481	124	41	8.3	2.7
Cameron	6,244	3,238	2,954	2,085	91.2	64.3	302	184	82	60.9	27.1
Catahoula	11,834	4,116	4,139	2,466	100.0	59.9	2,186	349	213	16.0	9.7
Claiborne*	25,063	7,748	5,871	5,718	75.8	73.7	6,277	17	15	.2	.2
Concordia	14,398	3,329	3,667	3,867	100.0	100.0	4,641	534	291	11.5	6.2
De Soto*	24,398	6,644	5,692	5,527	85.6	83.1	6,859	770	498	11.2	7.2
East Baton Rouge*	158,236	66,063	54,575	54,892	82.6	83.0	30,455	8,981	9.095	29.4	29.8
East Carroll	16,302	3,223	3,000	2,180	62.1	67.6	5,330	0	0	0	0
East Feliciana*	19,133	6,214	2,818	2,449	45.3	39.4	6,235	1,319	450	21.1	7.2
Evangeline*	31,629	13,972	13,170	12,995	94.3	93.0	3,038	3,252	3,095	100.0	100.0
Franklin	29,376	9,870	8,357	6,158	84.7	62.3	5,070	649	354	12.8	6.9
Grant	14,263	6,364	5,822	4,822	91.4	75.7	1,757	864	529	49.2	30.1
Iberia*	40,059	15,953	14,877	14,943	93.3	93.6	6,704	4,260	4,236	63.5	63.1
Iberville*	26,750	8,160	6,808	6,004	83.4	73.5	7,170	2,383	1,940	33.2	27.0
Jackson*	15,434	6,415	5,534	5,010	86.3	78.0	2,299	167	362	7.2	15.7
Jefferson*	103,873	52,836	54,859	61,713	100.0	100.0	9,187	6,492	7,032	70.7	76.5
Jefferson Davis*	26,298	11,705	9,484	8,475	81.0	72.4	2,673	1,688	1,584	63.1	59.2

TABLE 29—Continued

Louisiana Registration Statistics—Continued

Parish	Total population 1950	White population over 21 1950	Whites registered October 1956	Whites registered 1959	Percent white population over 21 registered October 1956	Percent white population over 21 registered 1959	Nonwhite population over 21 1950	Nonwhites registered October 1956	Nonwhites registered 1959	Percent nonwhites over 21 registered October 1956	Percent nonwhites over 21 registered 1959
Lafayette*	57,743	25,103	21,652	15,754	86.3	62.7	7,733	4,601	3,276	59.4	42.3
Lafourche*	42,209	19,888	20,410	21,180	100.0	100.0	2,820	1,661	1,949	58.9	69.1
LaSalle	12,717	6,615	6,941	4,953	100.0	74.8	813	364	157	44.8	19.3
Lincoln	25,782	9,297	7,638	5,052	82.2	54.3	5,242	1,011	508	19.2	9.6
Livingston	20,054	9,185	10,068	7,366	100.0	80.1	1,496	1,252	670	83.6	44.7
Madison	17,451	3,372	3,058	1,564	90.7	46.3	6,332	0	0	0	0
Morehouse	32,038	9,466	9,565	4,917	100.0	51.9	7,907	947	207	11.9	2.6
Natchitoches	38,144	11,828	9,916	6,270	83.8	53.0	8,445	2,993	1,414	35.4	16.7
Orleans*	570,445	271,421	180,317	162,660	66.4	59.9	113,241	32,578	31,563	28.7	27.8
Ouachita*	74,713	31,381	23,485	22,280	74.8	70.9	14,532	889	774	6.1	5.3
Plaquemines*	14,239	5,229	4,741	5,856	90.7	100.0	2,642	49	45	1.9	1.7
Point Coupee	21,841	5,873	4,946	3,456	84.2	58.8	5,711	1,326	659	23.2	11.5
Rapides*	90,648	37,185	27,108	25,550	72.9	68.7	17,618	2,895	2,763	16.4	15.6
Red River	12,113	3,569	3,603	2,346	100.0	65.7	2,917	1,362	16	46.7	.5
Richland	26,672	8,452	7,291	4,513	86.3	53.3	5,427	742	189	13.7	3.4
Sabine*	20,880	9,272	7,612	7,678	82.1	82.8	2,220	1,417	1,492	63.8	67.2
St. Bernard	11,087	5,594	11,369	9,842	100.0	100.0	858	802	463	93.5	53.9
St. Charles*	13,363	5,139	5,675	5,831	100.0	100.0	2,254	1,784	1,696	79.1	75.2
St. Helena	9,013	2,440	2,611	1,830	100.0	75.0	2,085	1,614	1,091	77.4	52.3
St. James*	15,334	4,288	4,090	4,138	95.4	96.5	3,818	2,088	2,230	54.7	58.4
St. John the Baptist*	14,861	4,298	3,807	2,647	88.6	61.5	3,745	2,448	2,138	65.4	57.0
St. Landry*	78,476	24,230	21,962	16,254	90.6	67.0	15,026	13,060	7,821	86.9	52.0
St. Martin*	26,353	9,101	7,563	7,036	83.1	77.3	4,343	2,609	2,530	60.1	58.2
St. Mary	35,848	12,680	10,674	10,546	84.2	83.1	7,260	2,670	2,688	36.8	37.0
St. Tammany*	26,988	11,455	13,393	14,333	100.0	100.0	4,155	2,038	2,073	49.0	49.8
Tangipahoa*	53,218	21,254	18,231	17,795	85.8	83.7	8,696	3,765	3,481	43.2	40.0
Tensas	13,209	2,587	2,053	1,025	79.4	39.6	4,592	0	0	0	0

Terrabonne*	43,328	17,440	14,109	11,683	80.9	66.9	5,170	1,067	1,055	20.6	20.4
Union*	19,141	7,542	6,895	4,207	91.4	55.7	3,162	1,099	377	34.8	11.9
Vermillion*	36,929	18,892	16,304	17,036	86.3	90.1	2,323	1,801	1,912	77.5	82.3
Vernon	18,974	9,536	9,649	7,664	100.0	80.3	1,312	892	633	68.0	48.2
Washington*	38,371	15,188	15,483	11,877	100.0	78.1	6,155	1,889	1,534	30.7	24.9
Webster	35,704	13,606	12,957	8,605	95.2	63.2	6,618	1,773	83	26.8	1.2
West Baton Rouge	11,738	3,158	3,047	2,076	96.5	65.7	3,440	1,036	719	30.1	20.9
West Carroll	17,248	7,223	5,685	3,847	78.7	53.2	1,531	292	71	19.0	4.6
West Feliciana	10,169	2,134	1,290	977	60.4	45.7	4,076	0	0	0	0
Winn	16,119	7,012	6,638	5,018	94.7	71.5	2,489	1,442	740	57.9	29.7
Total	2,683,516	1,105,861	903,959	828,686	81.7	74.9	481,284	152,587	132,506	31.7	27.5

*Permanent registration.

1950 population figures are from the U.S. Bureau of Census, 1950.

Registration figures are from Secretary of State of Louisiana, published regularly.

Population shifts, changes in age of population, or failure to strike the names of deceased or departed registrants have resulted in percentage calculations in excess of 100 percent "registered" in some parishes. In such cases, 100 percent is shown.

TABLE 30.—*North Carolina Registration Statistics*

County	Total population, 1950	White population over 21, 1950	Whites registered, 1958	Percent white population over 21 registered	Nonwhite population over 21, 1950	Nonwhites registered, 1958	Percent nonwhites over 21 registered in 1958
Alamance	71,220	36,001	42,383	100	6,897	*5,750	83.4
Alexander	14,554	7,424	5,825	78.5	516	112	21.7
Alleghany	8,155	4,570	6,147	100	147	31	21.2
Anson	26,781	8,064	*8,050	99.8	6,143	*700	6.5
Ashe	21,878	11,628	13,480	100	154	56	36.4
Avery	13,352	6,673	7,056	100	151	47	31.1
Beaufort	37,134	13,703			7,066		
Bertie	26,439	6,464			7,016		
Bladen	29,703	9,132	7,826	85.7	5,496	[1] 974	17.7
Brunswick	19,238	6,742			3,322		
Buncombe	124,403	68,718	75,621	100	9,950	5,804	58.3
Burke	45,518	24,231	28,500	100	1,824	1,500	82.2
Cabarrus	63,783	32,875			5,169		
Caldwell	43,352	21,700	*21,110	97.3	1,574	*530	33.7
Camden	5,223	1,951	*1,745	89.4	991	*155	15.6
Carteret	23,059	12,277	14,765	100	1,599	483	30.2
Caswell	20,870	6,020	6,764	100	4,383	1,291	29.5
Catawba	61,794	32,709	*33,000	100	2,878	*2,000	69.5
Chatham	25,392	10,512			3,936		
Cherokee	18,294	9,537	12,820	100	172	180	100
Chowan	12,540	4,219	3,902	92.5	2,681	401	15.0
Clay	6,006	3,185	*3,000	94.2	44	*30	68.2
Cleveland	64,357	28,883	26,374	91.3	6,652	2,930	44.0
Columbus	50,621	17,635			7,897		
Craven	48,823	18,603	10,800	58.1	8,446	1,800	21.3
Cumberland	96,006	39,762	21,182	53.3	14,275	4,034	28.3
Currituck	6,201	2,698	2,711	100	1,102	161	14.6
Dare	5,405	3,148	*2,150	68.3	241	*65	30.0
Davidson	62,244	32,747	*37,885	100	3,563	*1,784	50.1
Davie	15,420	7,867	*7,280	92.5	1,143	*780	68.2
Duplin	41,074	14,081	*14,323		7,336	*1,239	
Durham	101,639	44,022	39,229	89.1	20,101	12,209	60.7
Edgecombe	51,634	14,979	7,224	48.2	12,845	839	6.5
Forsyth	146,135	66,869	61,457	91.9	25,027	12,730	50.9
Franklin	31,341	10,167			6,643		
Gaston	110,836	55,388	48,000	86.7	8,163	12,000	100.0
Gates	9,555	2,876	2,340	81.4	2,344	150	6.4
Graham	6,886	3,445	3,324	96.5	113	[2] 0	
Granville	31,793	10,681	8,501	79.6	7,179	1,411	19.7
Greene	18,024	5,133			3,690		
Guilford	191,057	96,638	73,482	76.0	22,309	7,755	34.8
Halifax	58,377	15,763	14,231	90.3	14,350	1,537	10.7
Harnett	47,605	19,388			5,924		
Haywood	37,631	20,726	*17,450	84.2	488	*350	71.7
Henderson	30,921	17,624	(*)		1,319		
Hertford	21,453	5,347	6,068	100.0	6,201	180	2.9
Hoke	15,756	3,715	467	12.6	4,201	[3] 164	3.9
Hyde	6,479	2,458	2,130	86.7	1,207	110	9.1
Iredell	56,303	27,731	27,355	98.6	5,387	2,917	54.1

See footnotes at end of table.

TABLE 30.—*North Carolina Registration Statistics*—Continued

County	Total population, 1950	White population over 21, 1950	Whites registered, 1958	Percent white population over 21 registered	Nonwhite population over 21, 1950	Nonwhites registered, 1958	Percent nonwhites over 21 registered in1958
Jackson	19,261	9,608	9,549	99.4	732	59	8.1
Johnston	65,906	28,092	12,000	42.7	6,686	700	10.5
Jones	11,004	3,296	2,452	74.4	2,238	1,311	58.6
Lee	23,522	10,233	6,908	67.5	3,214	693	21.6
Lenoir	45,953	15,288	4,468	29.2	10,266	1,168	11.4
Lincoln	27,459	13,599	14,817	100.0	1,593	1,105	69.4
McDowell	25,720	13,394	11,500	85.9	796	700	87.9
Macon	16,174	8,577	6,500	75.8	198	50	25.3
Madison	20,522	10,748	*12,000	100.0	105	*[4] 200	100.0
Martin	27,938	7,758	8,278	100.0	6,117	847	13.8
Mecklenburg	197,052	94,618	81,985	86.6	29,472	10,013	34.0
Mitchell	15,143	8,167	8,418	100.0	35	39	100.0
Montgomery	17,260	7,855	----------	----------	1,960	----------	----------
Moore	33,129	14,150	15,062	100.0	4,636	1,617	34.9
Nash	59,919	20,141	----------	----------	11,712	----------	----------
New Hanover	63,272	27,693	26,125	94.3	11,675	6,330	54.2
Northampton	28,432	6,467	----------	----------	8,226	----------	----------
Onslow	42,047	17,679	12,407	70.2	3,316	842	25.4
Orange	34,435	16,052	----------	----------	4,385	----------	----------
Pamlico	9,993	3,856	3,673	95.3	1,549	280	18.1
Pasquotank	24,347	9,570	6,629	69.3	4,961	1,304	26.3
Pender	18,423	5,539	----------	----------	4,180	----------	----------
Perquimans	9,602	3,130	5,339	----------	2,290	----------	----------
Person	24,361	8,965	7,820	87.2	4,117	1,710	41.5
Pitt	63,789	19,684	20,336	100.0	14,057	1,855	13.2
Polk	11,627	5,837	9,485	100.0	799	698	87.4
Randolph	50,804	27,508	25,000	90.9	2,273	500	22.0
Richmond	39,597	15,737	14,714	93.5	6,065	1,696	28.0
Robeson	87,769	20,963	23,800	100.0	22,062	[5] 6,389	29.0
Rockingham	64,816	30,970	15,000	48.4	6,966	4,600	66.0
Rowan	75,410	38,510	45,241	100.0	7,080	3,633	51.3
Rutherford	46,356	23,411	26,393	100.0	2,828	674	23.8
Sampson	49,780	17,270	22,890	100.0	8,660	*[6] 5,206	60.1
Scotland	26,336	7,671	*8,504	100.0	5,791	*884	15.3
Stanly	37,130	19,398	23,225	100.0	2,329	1,300	55.8
Stokes	21,520	10,976	*11,100	100.0	932	*900	96.6
Surry	45,593	24,188	24,292	100.0	1,372	469	34.2
Swain	9,921	4,402	6,399	100.0	706	[7] 571	80.9
Transylvania	15,194	7,926	----------	----------	385	----------	----------
Tyrrell	5,048	1,830	*334	18.3	939	*28	3.0
Union	42,034	18,372	14,844	80.8	4,666	877	18.8
Vance	32,101	10,709	10,714	100.0	7,179	1,526	21.3
Wake	136,450	62,474	46,293	74.1	21,902	5,369	24.5
Warren	23,539	4,875	5,982	100.0	6,908	784	11.4
Washington	13,180	4,363	----------	----------	2,730	----------	----------
Watauga	18,342	9,647	8,000	82.9	129	65	50.4
Wayne	64,267	21,595	17,890	82.8	15,141	3,156	20.8
Wilkes	45,243	22,597	----------	----------	1,482	----------	----------

See footnotes at end of table.

TABLE 30.—*North Carolina Registration Statistics*—Continued

County	Total population, 1950	White population over 21, 1950	Whites registered, 1958	Percent white population over 21 registered	Nonwhite population over 21, 1950	Nonwhites registered, 1958	Percent nonwhites over 21 registered in 1958
Wilson	54,506	18,941	12,290	64.9	10,964	2,255	20.6
Yadkin	22,133	12,021	11,867	98.7	576	314	54.5
Yancey	16,306	8,471	*8,800	100.0	116	*85	73.3
Total	4,061,929	1,761,330	1,389,831	78.9	549,751	157,991	28.7

*County election boards indicated that these figures were not exact but were estimates.

1. Negroes 931, others 43.
2. "No Negroes live in Graham county"—chairman, county board of elections.
3. Negroes 109, Indians 55.
4. Negroes 100, others 100.
5. Negroes 1,739, Indians 4,650.
6. Negroes 4,762, others 444.
7. Negroes 90, others 481.

Population figures are from Bureau of Census, 1950.

1958 registration figures are from replies from county boards of elections in 83 of North Carolina's 100 counties to questionnaires of Commission's State Advisory Committee.

No figures were available for Negro registration in 21 of the 100 counties. Percentages are based on the available figures.

Population shifts, changes in age of population, or failure to strike deceased or departed persons have resulted in percentage calculations in excess of 100 percent "registered" in some counties. In such cases, 100 percent is shown.

TABLE 31

South Carolina Registration Statistics

County	Population 1950	Whites over 21 1950	Whites registered May 1958	Percent whites over 21 registered	Nonwhite population over 21 1950	Nonwhites over 21 registered May 1958	Percent nonwhites over 21 registered
Abbeville	22,456	8,951	5,420	60.6	3,678	118	3.2
Aiken	53,137	20,241	18,454	91.2	9,896	1,762	17.8
Allendale	11,773	2,091	2,419	100	3,891	140	3.6
Anderson	90,664	42,103	23,424	55.6	9,993	1,624	16.3
Bamberg	17,533	4,491	3,267	72.7	4,485	393	8.8
Barnwell	17,266	3,903	4,786	100	4,776	531	11.1
Beaufort	26,993	5,698	2,855	50.1	7,624	1,286	16.9
Berkeley	30,251	5,963	5,147	86.3	8,125	1,913	23.5
Calhoun	14,753	2,690	1,699	63.2	4,437	74	1.7
Charleston	164,856	59,381	32,859	55.3	34,111	7,277	21.3
Cherokee	34,992	15,304	10,612	69.3	3,692	664	18.0
Chester	32,597	11,276	8,463	75.1	6,788	680	10.0
Chesterfield	36,236	12,012	8,196	68.2	6,059	1,401	23.1
Clarendon	32,215	5,121	3,458	67.5	9,279	324	3.5
Colleton	28,242	7,942	5,695	71.7	6,768	735	10.9
Darlington	50,016	15.127	10,191	67.4	10,455	2,444	23.4
Dillon	30,930	8,481	4,924	58.1	6,520	816	12.5
Dorchester	22,601	5,931	5,330	89.9	5,772	412	7.1
Edgefield	16,591	4,190	3,267	78.0	4,312	270	6.3
Fairfield	21,780	5,207	4,218	81.0	5,931	750	12.6
Florence	79,710	24,652	16,090	65.3	16,650	1,863	11.2
Georgetown	31,762	8,038	4,667	58.1	7,321	911	12.4

See notes at end of table.

TABLE 31

South Carolina Registration Statistics—Continued

County	Population 1950	Whites over 21 1950	Whites registered 1958	Percent whites over 21 registered	Nonwhite population over 21 1950	Nonwhites over 21 registered 1958	Percent nonwhites over 21 registered
Greenville	168,152	83,923	47,057	56.7	17,150	4,040	23.6
Greenwood	41,628	18,050	10,844	60.1	6,782	838	12.4
Hampton	18,027	4,617	3,210	69.5	4,607	250	5.4
Horry	59,820	21,930	13,892	63.3	6,969	1,230	17.6
Jasper	10,995	2,181	1,975	90.6	3,281	489	14.9
Kershaw	32,287	9,527	8,706	91.4	7,065	1,084	15.3
Lancaster	37,071	14,582	12,084	82.9	5,111	893	17.5
Laurens	46,974	18,954	10,102	53.3	7,313	931	12.7
Lee	23,173	4,570	4,166	91.2	6,246	742	11.9
Lexington	44,279	20,628	14,106	68.4	4,698	213	4.5
McCormick	9,577	2,077	1,399	67.4	2,625	0	0
Marion	33,110	8,119	5,280	65.0	8,668	972	11.2
Marlboro	37,766	8,567	7,016	81.9	7,460	395	5.3
Newberry	31,711	12,540	7,984	63.7	5,896	496	8.4
Oconee	39,050	18,561	7,717	41.6	2,457	560	22.8
Orangeburg	68,726	15,339	10,068	65.6	19,158	2,220	11.6
Pickens	40,058	19,935	10,435	52.3	2,364	299	12.6
Richland	142,565	60,734	32,110	52.9	28,383	6,665	23.5
Saluda	15,924	5,517	4,135	75.0	2,971	216	7.3
Spartanburg	150,349	69,013	41,914	60.7	17,546	3,170	18.1
Sumter	57,634	14,453	7,574	52.4	14,807	2,130	18.3
Union	31,334	12,501	11,100	88.8	4,879	1,024	21.0
Williamsburg	43,807	7,572	6,156	81.3	12,121	234	1.9
York	71,596	28,100	16,552	58.9	10,904	2,414	22.1
Total	2,117,027	760,763	481,023	63.2	390,024	57,893	14.8

Total nonwhite population 1950	823,622
Total Negro population 1950	822,077
Total nonwhites other than Negroes	1,545
Total white population 1950	1,293,405
Percent Negro population 1950	38.8
Percent nonwhite population 1950	38.9

Population figures from Bureau of the Census, 1950.

Registration figures from Secretary of State, South Carolina, published in *Columbia State*, May 25, 1958.

Population shifts, changes in age of population, or failure to strike the names of deceased or departed registrants have resulted in percentage calculations in excess of 100 percent "registered" in some counties. In such cases, 100 percent is shown.

TABLE 32

Virginia Registration Statistics

Counties and independent cities	1950 population	Whites over 21 1950	Whites registered 1958	Percent whites over 21 registered 1958	Non-whites over 21 1950	Non-whites registered 1958	Percent non-whites over 21 registered 1958
COUNTIES							
Accomack	33,832	15,382	4,469	29.1	6,591	493	7.5
Albemarle	26,662	13,395	4,120	30.8	2,840	645	22.7
Alleghany	23,139	12,528	2,056	16.4	1,193	158	13.2
Amelia	7,908	2,390	1,975	82.6	1,999	607	30.4
Amherst	20,332	9,009	4,586	50.9	2,854	596	20.9
Appomattox	8,764	3,993	2,390	59.9	1,107	150	13.6
Arlington	135,449	87,177	43,252	49.6	4,248	1,274	30.0
Augusta	34,154	18,925	7,271	38.4	956	175	18.3
Bath	6,296	3,283	1,704	51.9	480	72	15.0
Bedford	29,627	14,482	6,130	42.3	2,916	855	29.3
Bland	6,436	3,551	1,672	47.1	79	17	21.5
Botetourt	15,766	8,369	4,740	56.6	891	0	0
Brunswick	20,136	5,156	3,856	74.8	5,503	770	14.0
Buchanan	35,748	15,744	11,625	73.9	6	0	0
Buckingham	12,288	4,124	1,075	26.1	2,493	440	17.6
Campbell	28,877	13,307	5,358	40.3	3,357	775	23.1
Caroline	12,471	3,848	1,410	36.6	3,086	502	16.3
Carroll	26,695	14,551	6,445	44.3	200	11	5.5
Charles City	4,676	606	554	91.4	1,930	704	36.5
Charlotte	14,057	5,034	3,296	65.5	2,702	284	10.5
Chesterfield	40,400	20,025	11,325	56.6	4,489	1,270	28.3
Clarke	7,074	3,620	2,105	58.1	746	225	30.2
Craig	3,452	2,060	1,080	52.4	13	0	0
Culpeper	13,242	6,169	2,827	45.8	1,907	477	25.0
Cumberland	7,252	1,953	1,475	75.5	1,996	300	15.0
Dickenson	23,393	10,507	9,260	88.1	163	45	27.6
Dinwiddie	18,839	4,169	3,424	82.1	7,879	836	10.6
Elizabeth City	55,028	27,514	*6,250	22.7	6,973	*650	9.3
Essex	6,530	2,203	845	38.4	1,594	225	14.1
Fairfax	98,557	52,907	47,506	89.8	6,563	1,074	16.4
Fauquier	21,248	9,638	3,937	40.8	2,912	183	6.3
Floyd	11,351	6,250	4,433	70.9	236	105	44.5
Fluvanna	7,121	3,028	808	26.7	1,301	82	6.3
Franklin	24,560	11,801	3,609	30.6	1,750	386	22.1
Frederick	17,537	10,051	4,220	42.0	214	45	21.0
Giles	18,956	10,338	4,950	47.9	265	51	19.2
Gloucester	10,343	4,588	2,949	64.3	1,960	647	33.0
Goochland	8,934	2,968	1,950	65.7	2,515	675	26.8
Grayson	21,379	12,010	6,430	53.5	462	71	15.4
Greene	4,745	2,186	1,700	77.8	357	87	24.4
Greeneville	16,319	4,058	2,810	69.2	4,506	875	19.4
Halifax	41,442	17,952	5,750	31.0	8,675	582	6.7
Hanover	21,985	9,715	4,640	47.8	3,388	535	15.8
Henrico	57,340	33,337	29,958	89.9	3,253	855	26.3
Henry	31,219	13,383	6,270	46.9	3,474	351	10.1
Highland	4,069	2,394	1,247	52.1	103	10	9.7
Isle of Wight	14,906	4,520	3,592	79.5	3,957	931	23.5
James City	6,317	2,247	1,123	50.0	1,590	342	21.5
King George	6,710	3,042	1,200	39.4	987	325	32.9
King and Queen	6,299	1,837	565	30.8	1,795	350	19.5
King William	7,589	2,612	1,100	42.1	1,888	305	16.2
Lancaster	8,640	3,361	1,660	49.4	2,015	415	20.6
Lee	36,106	18,139	12,183	67.2	257	128	49.8

See notes at end of table.

TABLE 32—Continued

Virginia Registration Statistics—Continued

Counties and independent cities	1950 population	Whites over 21 1950	Whites registered 1958	Percent whites over 21 registered 1958	Non-whites over 21 1950	Non-whites registered 1958	Percent non-whites over 21 registered 1958
COUNTIES—continued							
Loudoun	21,147	10,429	7,498	71.9	2,098	421	20.1
Louisa	12,826	4,919	2,085	42.4	2,602	379	14.6
Lunenburg	14,116	5,010	2,200	43.9	2,905	460	15.8
Madison	8,273	3,865	1,985	51.4	976	125	12.8
Mathews	7,148	3,912	1,475	37.7	1,139	200	17.6
Mecklenburg	33,497	10,479	5,250	50.1	7,655	630	8.2
Middlesex	6,715	2,675	1,003	37.5	1,568	203	12.9
Montgomery	29,780	16,609	6,100	36.7	959	430	44.8
Nansemond	25,238	5,441	2,909	53.5	8,931	1,338	15.0
Nelson	14,042	6,145	3,078	50.1	1,882	366	19.4
New Kent	3,995	1,159	808	69.7	1,150	374	32.5
Norfolk	99,937	48,670	6,739	100.0	8,898	1,301	100.0
Northampton	17,300	5,688	2,275	40.0	5,105	520	10.2
Northumberland	10,012	4,038	3,070	76.0	2,118	1,480	69.9
Nottoway	15,479	5,665	2,655	46.9	3,607	565	15.7
Orange	12,755	5,978	2,274	38.0	1,791	257	14.3
Page	15,152	8,698	5,900	67.8	313	110	35.1
Patrick	15,642	7,711	3,900	50.6	626	80	12.8
Pittsylvania	66,096	26,440	6,425	24.3	9,271	493	5.3
Powhatan	5,556	1,783	1,365	76.6	1,349	431	31.9
Prince Edward	15,398	5,238	2,750	52.5	3,468	700	20.2
Prince George	19,679	8,148	1,819	22.3	3,129	427	13.6
Princess Anne	42,277	20,306	15,158	74.6	5,724	1,415	24.7
Prince William	22,612	11,945	3,851	32.2	1,524	354	23.2
Pulaski	27,758	14,549	7,572	52.0	1,165	505	43.3
Rappahannock	6,112	2,876	2,150	74.8	617	210	34.0
Richmond	6,189	2,642	2,150	81.4	1,077	210	19.5
Roanoke	41,486	23,715	18,647	78.6	2,321	788	34.0
Rockbridge	23,359	12,349	4,834	39.2	1,211	345	28.5
Rockingham	35,079	20,265	7,855	38.8	409	78	19.1
Russell	26,818	13,384	6,963	52.0	370	89	24.1
Scott	27,640	14,861	6,320	24.5	187	40	21.4
Shenandoah	21,169	12,900	6,205	48.1	231	55	23.8
Smyth	30,187	16,710	7,931	47.5	289	91	31.5
Southampton	26,522	6,661	3,630	54.5	7,972	525	6.6
Spotsylvania	11,920	5,453	3,500	64.2	1,470	400	27.2
Stafford	11,902	6,229	2,940	47.2	800	345	43.1
Surry	6,220	1,598	1,075	67.3	1,941	265	13.7
Sussex	12,785	2,834	2,275	80.3	4,034	635	15.7
Tazewell	47,512	23,244	7,140	30.7	1,667	347	20.8
Warren	14,801	8,168	3,911	47.9	663	179	27.0
Warwick	39,875	16,646	4,950	66.8	7,129	*860	18.3
Washington	37,536	19,929	7,686	38.6	741	178	24.0
Westmoreland	10,148	3,644	3,177	87.2	2,285	366	16.0
Wise	56,336	28,318	11,044	39.0	1,376	51	3.7
Wythe	23,327	12,526	12,131	96.9	633	260	41.1
York	11,750	5,309	2,715	51.1	1,699	520	30.6
INDEPENDENT CITIES							
Alexandria	61,787	37,163	27,175	73.1	5,129	871	17.0
Bristol	15,954	8,843	3,000	33.9	704	230	32.7
Buena Vista	5,214	2,794	1,093	39.1	148	31	20.9
Charlottesville	25,969	14,763	9,467	64.1	3,079	1,171	38.0

See notes at end of table.

TABLE 32—Continued

Virginia Registration Statistics—Continued

Counties and independent cities	1950 population	Whites over 21 1950	Whites registered 1958	Percent whites over 21 registered 1958	Non-whites over 21 1950	Non-whites registered 1958	Percent non-whites over 21 registered 1958
INDEPENDENT CITIES—con.							
Clifton Forge	5,795	3,347	2,000	59.8	645	216	33.5
Colonial Heights	6,077	4,178	2,500	59.8	7	0	0
Covington	5,860		2,755			460	
Danville	35,066	17,024	9,893	58.1	6,517	1,557	23.9
Falls Church	7,535	4,581	3,297	72.0	90	55	57.9
Fredericksburg	12,158	6,583	3,853	58.5	1,224	558	45.6
Galax	5,248		1,350			10	
Hampton	5,966	2,750	14,811	100.0	1,644	2,629	100.0
Harrisonburg	10,810	6,508	3,200	49.2	433	185	42.7
Hopewell	10,219	5 547	4,000	72.1	917	310	33.8
Lynchburg	47,727	25,019	17,992	100.0	6,506	2,576	39.6
Martinsville	17,251	7,725	3,397	44.0	2,825	410	14.5
Newport News	42,358	16,324	6,626	40.6	11,754	4,743	40.4
Norfolk	213,513	99,609	59,422	6.8	42,028	9,888	3.1
Norton			1,386			73	
Petersburg	35,054	14,073	6,029	42.8	9,399	2,207	23.5
Portsmouth	80,039	31,827	11,415	35.9	19,196	4,309	22.4
Radford	9,026	5,001	3,957	79.1	369	241	65.3
Richmond	230,310	115,245	55,666	48.3	48,257	12,346	25.6
Roanoke	91,921	53,274	33,825	63.5	9,420	2,699	28.7
South Norfolk	10,434	5,264	3,850	73.1	1,434	685	47.8
Staunton	19,927	12,615	5,337	42.3	1,397	396	28.3
Suffolk	12,339	5,497	2,988	54.4	3,004	675	22.5
Virginia Beach			3,591			123	
Warwick			11,116			1,303	
Waynesboro	12,357	7,111	4,165	58.6	564	144	25.5
Williamsburg	6,735	4,041	1,173	29.0	569	120	21.1
Winchester	13,841	8,776	3,996	45.5	722	91	12.6
State totals	3,318,680	1,606,669	864,863	53.8	429,799	93,479	21.7

*1952 figures latest available.

Total nonwhite population for State, all ages, 1950, 737,125.

Total Negro population for State, all ages, 1950, 734,211; 22.2 percent of total.

Population figures from Bureau of the Census, 1950.

Registration figures from Secretary of State of Virginia, furnished by Virginia State Advisory Committee.

Population shifts, changes in age of population, or failure to strike the names of deceased or departed registrants have resulted in percentage calculations in excess of 100 percent "registered" in some counties. In such cases, 100 percent is shown.

Unofficial Figures

TABLE 33

Alabama Registration Statistics

County	Total population 1950	White population over 21 1950	Whites registered 1958	Percent white population over 21 registered	Nonwhite population over 21 1950	Nonwhites registered 1958	Percent nonwhite population over 21 registered
Autauga	18,186	5,717	4,616	80.7	4,042	100	2.5
Baldwin	40,997	18,028	15,520	86.1	4,493	480	10.7
Barbour	28,892	8,012	6,289	78.5	7,158	450	6.3
Bibb	17,987	6,681	5,700	85.3	2,801	200	7.1
Blount	28,975	15,369	10,900	70.9	429	100	23.3
Bullock	16,054	2,633	2,200	83.6	5,425	5	.09
Butler	29,228	9,467	8,171	86.3	6,024	629	10.4
Calhoun	79,539	37,379	21,386	57.2	8,304	1,948	23.5
Chambers	39,528	15,710	12,415	79.0	7,175	650	9.1
Cherokee	17,634	8,821	7,600	86.2	736	400	54.3
Chilton	26,922	12,888	11,661	90.5	2,027	342	16.9
Choctaw	19,152	4,914	5,228	100.0	4,822	172	3.6
Clarke	26,548	7,832	7,200	91.9	6,434	450	7.0
Clay	13,929	6,934	6,800	98.1	1,011	200	19.8
Cleburne	11,904	6,058	5,742	94.8	380	58	15.3
Coffee	30,720	13,516	11,357	84.0	3,114	1,375	44.2
Colbert	39,561	18,063	12,800	70.9	4,519	3,200	70.8
Conecuh	21,776	6,734	5,550	82.4	4,435	650	14.7
Coosa	11,766	4,734	4,413	93.2	1,828	550	30.1
Covington	40,373	19,986	16,500	82.6	3,157	500	15.8
Crenshaw	18,981	7,604	6,947	91.4	2,801	500	17.9
Cullman	49,046	26,538	17,825	67.2	249	100	40.2
Dale	20,828	9,418	8,450	89.7	2,454	300	12.2
Dallas	56,270	12,597	7,480	59.4	18,145	520	2.9
De Kalb	45,048	24,601	19,300	78.5	443	300	67.7
Elmore	31,649	12,247	11,300	92.3	5,543	300	5.4
Escambia	31,443	11,767	11,000	93.5	5,425	1,000	18.4
Etowah	93,892	47,217	33,005	69.9	7,672	2,100	27.4
Fayette	19,388	9,279	8,359	90.1	1,497	750	50.1
Franklin	25,705	13,460	11,150	82.8	700	350	50.0
Geneva	25,899	12,660	7,490	59.2	1,686	82	4.9
Greene	16,482	1,820	1,566	86.0	6,628	174	2.6
Hale	20,832	3,680	3,050	82.9	7,041	150	2.1
Henry	18,674	5,646	4,751	84.1	4,029	393	9.8
Houston	46,522	19,698	13,249	67.3	7,211	700	9.7
Jackson	38,998	19,381	12,919	66.7	1,242	675	54.3
Jefferson	558,928	226,280	119,000	52.6	121,667	11,000	9.0
Lamar	16,441	8,141	7,925	97.3	1,204	175	14.5
Lauderdale	54,179	26,831	13,600	50.7	4,022	3,400	84.5
Lawrence	27,128	10,905	9,200	84.4	3,010	800	26.6
Lee	45,073	16,207	8,375	51.7	8,954	625	6.9
Limestone	35,766	14,937	9,585	64.2	4,013	500	12.5
Lowndes	18,018	2,057	2,306	100.0	6,512	0	0
Macon	30,561	3,081	3,102	100.0	14,539	1,218	8.4
Madison	72,903	30,662	18,691	60.9	10,333	3,285	31.8
Marengo	29,494	5,456	5,392	98.8	10,226	132	1.3
Marion	27,264	14,271	12,074	84.6	384	219	57.0
Marshall	45,090	24,740	19,294	77.9	604	37	6.1
Mobile	231,105	93,506	47,560	50.9	45,493	10,440	22.9
Monroe	25,732	7,184	5,815	80.9	5,914	160	2.7
Montgomery	138,965	51,869	25,520	49.2	34,079	3,480	10.2
Morgan	52,924	26,602	14,025	52.7	4,641	2,475	53.3
Perry	20,439	3,757	4,050	100.0	6,351	250	3.9

See notes at end of table.

Unofficial Figures

TABLE 33—Continued

Alabama Registratton Statistics—Continued

County	Total population 1950	White population over 21 1950	Whites registered 1958	Percent white population over 21 registered	Nonwhite population over 21 1950	Nonwhite registered 1958	Percent nonwhite population over 21 registered
Pickens	24,349	7,324	5,750	78.5	5,547	550	9.9
Pike	30,608	10,062	7,850	78.0	6,866	750	10.9
Randolph	22,513	9,860	9,994	100.0	2,728	306	11.2
Russell	40,364	11,860	8,006	67.5	10,135	500	4.9
St. Clair	26,687	12,125	8,054	66.4	2,363	696	29.5
Shelby	30,362	13,255	9,625	72.6	3,356	875	26.1
Sumter	23,610	3,600	2,875	79.9	8,700	425	4.9
Talladega	63,639	24,317	14,500	59.6	9,318	3,500	37.6
Tallapoosa	35,074	15,015	13,400	89.2	5,083	600	11.8
Tuscaloosa	94,092	42,200	24,151	57.2	14,157	2,680	18.9
Walker	63,769	30,852	23,240	75.3	3,850	2,580	67.0
Washington	15,612	4,929	4,850	98.4	2,835	750	26.5
Wilcox	23,476	3,056	3,040	99.5	8,218	0	0
Winston	18,250	9,484	8,208	86.5	63	11	17.5
Total	3,061,743	1,231,514	828,946	67.3	516,245	73,272	14.2

Population shifts, changes in age of population, or failure to strike the names of deceased or departed registrants, have resulted in percentage calculations in excess of 100 percent "registered" in some counties. 100 percent is shown in such cases.

Population figures are from Bureau of Census, 1950.

Registration figures are from Birmingham News, Feb. 17, 1959.

TABLE 34. *Mississippi Registration Statistics*

County	Total population, 1950	Nonwhite percent of total population, 1950	White population over 21, 1950	Nonwhite population over 21, 1950	Nonwhites registered, 1955	Percent nonwhites over 21, registered
Adams	32,256	49.9	10,097	9,338	641	6.9
Alcorn	27,158	14.4	13,802	2,225	78	3.5
Amite	19,261	52.2	5,162	4,598	3	.1
Attala	26,652	43.4	9,011	5,179	34	.7
Benton	8,793	43.8	2,780	1,749	35	2.0
Bolivar	63,004	68.5	11,144	21,805	511	2.3
Calhoun	18,369	23.3	8,122	1,893	6	.32
Carroll	15,499	57.0	3,880	3,958	0	0
Chickasaw	18,951	44.5	6,305	4,016	0	0
Choctaw	11,009	30.2	4,469	1,482	19	1.3
Claiborne	11,944	74.8	1,929	4,728	111	2.3
Clarke	19,362	40.7	6,699	3,849	0	0
Clay	17,757	56.9	4,784	4,922	12	.2
Coahoma	49,361	72.2	8,409	19,136	1,070	5.6
Copiah	30,493	53.4	8,827	7,841	16	.2
Covington	16,036	32.5	5,932	2,354	419	17.8
De Soto	24,599	67.2	4,775	8,013	1	.01
Forrest	45,055	28.8	19,708	7,406	16	.2
Franklin	10,929	39.4	3,956	2,294	70	3.1

See notes at end of table.

Unofficial Figures

TABLE 34. *Mississippi Registration Statistics*—Continued

County	Total population, 1950	Nonwhite percent of total population, 1950	White population over 21, 1950	Nonwhite population over 21, 1950	Nonwhites registered, 1955	Percent nonwhites over 21, registered
George	10,012	12.3	4,677	618	0	0
Greene	8,215	18.3	3,491	758	38	5
Grenada	18,830	52.2	5,599	4,980	39	.8
Hancock	11,891	17.1	5,769	1,131	449	39.7
Harrison	84,073	16.0	42,170	7,858	1,569	20
Hinds	142,164	45.0	52,015	35,021	4,089	11.7
Holmes	33,301	73.5	5,569	11,468	45	.4
Humphreys	23,115	69.7	3,806	7,712	37	.5
Issaquena	4,966	67.4	800	1,790	0	0
Itawamba	17,216	5.4	9,298	470	42	8.9
Jackson	31,401	21.5	14,178	3,752	900	24
Jasper	18,912	51.4	5,470	4,313	9	.2
Jefferson	11,306	74.5	1,901	4,304	0	0
Jefferson Davis	15,500	55.5	3,847	3,923	1,038	26.4
Jones	57,235	26.3	24,617	8,046	872	10.8
Kemper	15,893	59.4	3,816	4,023	20	.5
Lafayette	22,798	35.5	8,957	3,844	105	2.7
Lamar	13,225	15.9	6,115	1,118	0	0
Lauderdale	64,171	36.4	26,598	12,965	1,039	8
Lawrence	12,639	37.6	4,425	2,229	268	12
Leake	21,600	42.4	7,409	3,835	66	1.7
Lee	38,237	27.9	17,082	5,531	97	1.8
Leflore	51,813	68.2	10,332	17,893	297	1.6
Lincoln	23,899	32.9	11,087	4,507	516	11.4
Lowndes	37,852	48.6	11,667	9,177	117	1.3
Madison	33,860	73.6	5,606	11,586	431	3.7
Marion	23,967	35.0	9,044	4,103	331	8.1
Marshall	25,106	70.6	4,406	8,210	15	.2
Monroe	36,543	37.5	13,667	6,734	18	.3
Montgomery	14,470	43.0	5,039	2,978	0	0
Neshoba	25,730	25.9	10,810	2,984	8	.3
Newton	22,681	34.6	8,727	3,687	32	1.4
Noxubee	20,022	74.4	3,134	6,764	0	0
Oktibbeha	24,569	47.8	8,042	5,409	128	2.4
Panola	31,271	55.9	8,139	8,628	1	.01
Pearl River	20,641	21.8	9,084	2,454	0	0
Perry	9,108	24.3	3,707	1,136	58	5.1
Pike	35,137	44.7	12,147	7,608	137	1.8
Pontotoc	19,994	19.1	9,608	1,847	6	3.2
Prentiss	19,810	11.8	10,103	1,170	18	1.5
Quitman	25,885	60.7	5,186	7,844	234	3
Rankin	28,881	47.3	9,829	7,295	33	.4
Scott	21,681	43.2	7,247	4,329	15	.3
Sharkey	12,903	71.3	2,124	4,533	1	.02
Simpson	21,819	33.3	8,486	3,351	61	1.8
Smith	16,740	20.3	7,363	1,400	6	.4
Stone	6,264	21.8	2,799	746	25	3.3
Sunflower	56,031	68.1	10,037	18,949	114	.6
Tallahatchie	30,486	63.7	6,299	9,235	0	0
Tate	18,011	57.6	1,535	4,989	0	0
Tippah	17,522	19.4	8,037	1,603	144	9
Tishomingo	15,544	5.2	8,492	463	17	3.7
Tunica	21,664	81.8	2,251	9,123	27	.3
Union	20,262	17.9	10,008	1,904	67	3.5
Walthall	15,563	46.0	4,735	3,017	0	0

See notes at end of table.

Unofficial Figures

TABLE 34. *Mississippi Registration Statistics*—Continued

County	Total Population 1950	Nonwhite percent of total population, 1950	Whites population over 21, 1950	Nonwhite population over 21, 1950	Nonwhites registered 1955	Percent nonwhites over 21, registered
Warren	39,616	50.7	12,756	12,312	1,099	8.9
Washington	70,504	66.8	14,074	25,823	1,464	5.7
Wayne	17,010	36.6	5,854	2,857	0	0
Webster	11,607	23.2	5,366	1,243	3	.2
Wilkinson	14,116	69.1	2,626	4,588	40	.9
Winston	22,231	41.8	7,561	4,162	30	.7
Yalobusha	15,191	43.9	5,271	3,142	9	.3
Yazoo	35,712	61.8	8,024	11,126	81	.7
	2,178,914		707,709	497,384	19,347	3.9

Population figures are from Bureau of Census, 1950.

County registration figures are estimates from Master's thesis, *Negro Voting in Mississippi*, by James Barnes, graduate student, University of Mississippi, 1955, based on interviews with officials and/or examination of county records. See also *Congressional Record*, June 10, 1957, pp. 7676–77, 85th Congress, 1st Session; Statewide estimates from 1954 survey made by then Attorney General (now Governor) James P. Coleman, Hearings, House Judiciary Subcommittee, 85th Congress, 1st Session, 1957, pp. 736–739.

Additional Mississippi Registration Statistics

The State Times of Jackson, Mississippi, surveyed the following counties in the fall of 1956 and published these registration figures (Oct. 29–Nov, 1, 1956). For other statistics on these counties, see preceding table.

	Negroes registered, 1956		Negroes registered, 1956
Benton	35	Itawamba	36
Calhoun	2	Marion	500
Choctaw	13	Sharkey	1
Clarke	0	Smith	13
Covington	440	Tunica	38
Hinds	4,305	Wilkinson	55
Issaquena	0		

Unofficial Figures

TABLE 35.—*Texas Registration Statistics*

Counties	Population 1950	Whites over 21 1950	Whites registered 1956	Percent whites over 21 registered	Nonwhite population over 21 1950	Nonwhite poll taxes paid and listed exempts	Nonwhite estimated unlisted exempts	Nonwhites over 21 registered 1958	Percent nonwhites over 21 registered
Anderson	31,875	14,292	5,345	37.4	5,323	1,105	656	1,761	33.1
Andrews	5,002	2,829			25	33	1	34	100.0
Angelina [1]	36,032	18,262	8,285	45.4	3,554	1,010	188	(1,198)	33.6
Aransas	4,252	2,532			73	54	9	63	86.3
Archer [3]	6,816	4,119			17	1	1	(2)	11.8
Armstrong [3]	2,215	1,433			6	0	0	(0)	0
Atascosa	20,048	10,495			125	24	12	36	28.8
Austin [4]	14,663	8,100	4,151	51.2	1,642	365	435	(800)	48.7
Bailey [3]	7,592	4,026	2,044	50.8	141	29	6	(35)	24.8
Bandera	4,410	2,896			14	2	1	3	21.4
Bastrop	19,622	8,556	2,793	32.6	3,385	666	858	1,524	45.0
Baylor	6,875	4,215			72	6	8	14	19.4
Bee	18,174	9,955			295	120	55	175	59.3
Bell	73,824	40,752	11,472	28.2	5,273	1,020	211	1,231	23.3
Bexar	500,460	279,792	122,430	43.7	22,310	7,551	216	7,767	34.8
Blanco	3,780	2,442			64	15	23	38	59.4
Borden	1,106	603			10	0	0	0	0
Bosque	11,836	7,748			215	9	59	68	31.6
Bowie	61,966	29,394	11,261	38.3	8,813	1,969	922	2,891	32.8
Brazoria	46,549	23,634	14,516	61.4	4,470	1,448	672	2,120	47.4
Brazos	38,390	17,372	8,878	51.1	5,006	1,050	533	1,583	31.6
Brewster	7,309	4,152			27	7	7	14	51.9
Briscoe [3]	3,528	2,037			41	10	2	(12)	29.3
Brooks	9,195	4,841			22	4	2	6	27.3
Brown	28,607	18,019			590	168	90	258	43.7
Burleson [4]	13,000	5,487	2,257	41.1	2,318	508	704	(1,212)	52.3
Burnet [3]	10,356	6,463			133	26	16	(42)	31.6
Caldwell	19,350	9,637	3,527	36.6	1,785	370	448	818	45.9
Calhoun	9,222	4,957			429	119	58	177	41.3
Callahan	9,087	5,936			6	0	2	2	33.3
Cameron [3]	125,170	65,317			648	88	39	(127)	19.6
Camp [4]	8,740	3,473	2,216	63.8	1,946	532	468	(1,000)	51.4
Carson	6,852	4,098			11	3	2	5	45.5
Cass [4]	26,732	10,993	4,314	39.2	4,332	1,324	917	(2,241)	51.7
Castro	5,417	2,920			32	19	1	20	62.5
Chambers	7,871	3,795	3,429	90.4	876	621	174	795	90.8
Cherokee	38,694	18,376	6,595	35.9	6,447	883	1,101	1,984	30.8
Childress	12,123	7,007			517	61	62	123	23.8
Clay	9,896	6,166			65	9	21	30	46.2
Cochran [3]	5,928	3,110			96	20	10	(30)	31.3
Coke	4,045	2,463			5	0	0	0	0
Coleman [3]	15,503	9,765			237	48	38	(86)	36.3
Collin [4]	41,692	24,349	6,653	27.3	2,077	444	244	(688)	33.1
Collingsworth [3]	9,139	4,983			391	81	48	(129)	32.9
Colorado	17,576	8,506	5,187	60.9	2,567	535	687	1,222	47.6
Comal	16,357	9,794			160	15	1	16	10.0
Comanche	15,516	10,285			8	0	3	3	37.5
Concho	5,078	3,081			6	0	1	1	16.7
Cooke [4]	22,146	13,138			616	112	18	(130)	21.1
Coryell	16,284	9,972			199	8	49	57	28.6

See footnotes at end of table.

Unofficial Figures

TABLE 35.—*Texas Registration Statistics*—Continued

County	Population 1950	Whites over 21 1950	Whites registered 1956	Percent whites over 21 registered	Nonwhite population over 21 1950	Nonwhite poll taxes paid and listed exempts	Nonwhite estimated unlisted exempts	Nonwhites over 21 registered 1958	Percent nonwhites over 21 registered
Cottle [3]	6,099	3,387			213	46	14	(60)	28.2
Crane	3,965	2,259			51	53	1	54	100.0
Crocket [3]	3,981	2,203			81	12	6	(18)	22.2
Crosby [3]	9,582	5,123			410	99	39	(138)	33.7
Culberson	1,825	1,036			4	0	0	0	0
Dallam	7,640	4,631			27	6	2	8	29.6
Dallas [2]	614,799	357,415	224,453	62.8	54,332	17,074	1,615	(18,689)	34.4
Dawson	19,113	9,963	13,051	100.0	550	132	2	134	24.4
Deaf Smith	9,111	5,291			4	4	0	4	100.0
Delta	8,964	5,025			509	24	101	125	24.6
Denton [1]	41,365	23,438	7,455	31.8	1,362	200	105	(305)	22.4
De Witt [4]	22,973	12,386	4,638	37.4	1,975	387	547	(934)	47.3
Dickens	7,177	3,943			212	14	31	45	21.2
Dimmit	10,654	5,501			38	3	5	8	21.1
Donley	6,216	3,720			124	13	20	33	26.6
Duval	15,643	8,257			18	4	6	10	55.6
Eastland [3]	23,942	15,725			213	38	62	(100)	46.9
Ector [3]	42,102	24,276	12,724	52.4	988	189	28	(217)	21.9
Edwards	2,908	1,681			12	1	1	2	16.6
Ellis [4]	45,645	22,445	4,750	21.2	5,841	1,270	852	(2,122)	36.3
El Paso [3]	194,968	108,349	10,275	9.5	3,139	905	57	(962)	30.6
Erath	18,434	11,987			121	4	25	29	23.9
Falls	26,724	11,475	4,290	37.4	4,612	359	1,121	1,480	32.1
Fannin [4]	31,253	18,121	14,675	80.9	1,851	384	490	(874)	47.2
Fayette	24,176	13,587	4,867	35.8	2,185	275	643	918	42.0
Fisher	11,023	6,060			304	31	48	79	25.9
Floyd	10,535	6,161			218	36	16	52	23.9
Foard	4,216	2,345			195	23	15	38	19.5
Fort Bend [4]	31,056	13,805	6,531	47.3	4,437	909	952	(1,861)	41.9
Franklin	6,257	3,770			216	50	54	104	48.1
Freestone	15,696	6,219	2,244	36.1	3,197	751	860	1,611	50.4
Frio	10,357	5,365			45	0	6	14	31.1
Gaines [3]	8,909	4,957			64	14	5	(19)	29.7
Galveston	113,066	57,319	37,393	65.2	15,520	6,972	358	7,330	43.3
Garza	6,281	3,536			151	37	10	47	32.3
Gillespie	10,520	6,826			11	2	4	6	54.5
Glasscock	1,089	632			4	0	1	1	25.0
Goliad [3]	6,219	3,299			402	77	105	(182)	45.3
Gonzales	21,164	10,438	3,225	30.9	2,134	224	560	784	36.7
Gray [3]	24,728	14,857			424	75	2	(77)	18.2
Grayson [4]	70,467	42,093	12,725	30.2	3,892	1,900	232	(2,132)	54.8
Gregg	61,258	29,620	18,912	63.8	8,595	4,412	690	5,102	59.4
Grimes [4]	15,135	5,783	4,558	78.8	3,427	740	948	(1,688)	49.3
Guadalupe [4]	25,392	12,911	4,297	33.3	2,101	438	541	(979)	46.6
Hale [2]	28,211	15,995			602	89	11	(100)	16.6
Hall [3]	10,930	5,804			480	118	38	(156)	32.5
Hamilton	10,660	7,152			4	0	1	1	25.0
Hansford	4,202	2,506			4	0	0	0	0
Hardeman [3]	10,212	5,934			475	99	65	(164)	34.5
Hardin	19,535	9,643	4,339	45.0	1,815	765	334	1,099	60.6
Harris	806,701	426,225	252,248	59.2	96,679	44,282	1,712	45,994	47.5

See footnotes at end of table.

Unofficial Figures

TABLE 35.—*Texas Registration Statistics*—Continued

County	Population 1950	Whites over 21 1950	Whites registered 1956	Percent whites over 21 registered	Non-white population over 21 1950	Non-white poll taxes paid and listed exempts	Non-white estimated unlisted exempts	Non-whites over 21 registered 1958	Percent non-whites over 21 registered
Harrison [2]	47,745	14,623	4,449	30.4	12,840	2,200	1,543	(3,743)	29.2
Hartley	1,913	1,178	----------	----------	10	0	1	1	10.0
Haskell	13,736	7,707	----------	----------	454	35	45	80	17.6
Hays	17,840	9,396	2,750	29.3	718	128	187	315	43.9
Hemphill	4,123	2,427	----------	----------	--------	0	0	0	0
Henderson	23,405	11,663	6,478	55.6	2,531	463	518	981	38.8
Hidalgo [3]	160,446	82,211	----------	----------	801	73	77	(150)	18.7
Hill	31,282	17,370	5,261	30.3	2,445	105	490	595	24.3
Hockley	20,407	10,774	----------	----------	483	31	28	59	12.2
Hood	5,287	3,487	----------	----------	28	4	25	29	100.0
Hopkins	23,490	13,528	9,235	68.3	1,395	201	292	493	35.3
Houston	22,825	8,818	3,859	43.8	4,631	705	1,050	1,755	37.9
Howard	26,722	15,611	----------	----------	522	182	4	186	35.6
Hudspeth	4,298	2,289	----------	----------	19	0	1	1	5.3
Hunt [4]	42,731	23,752	7,997	33.7	3,411	738	260	(998)	29.3
Hutchinson	31,580	18,099	----------	----------	340	141	31	172	50.6
Irion [3]	1,590	953	----------	----------	11	0	1	(1)	9.1
Jack [3]	7,755	4,983	----------	----------	42	8	4	(12)	28.6
Jackson	12,916	6,405	3,561	55.6	993	167	202	369	37.2
Jasper	20,049	8,720	3,988	45.7	2,790	639	572	1,211	43.4
Jeff Davis	2,090	1,187	----------	----------	19	2	3	5	26.3
Jefferson	195,083	96,405	67,282	69.8	26,477	9,999	162	10,161	38.4
Jim Hogg	5,389	2,938	----------	----------	10	2	1	3	30.0
Jim Wells [3]	27,991	14,545	----------	----------	275	48	3	(51)	18.5
Johnson	31,390	19,296	6,743	34.9	1,048	83	98	181	17.3
Jones	22,147	12,877	2,626	20.4	700	58	109	167	23.9
Karnes	17,139	9,049	----------	----------	359	75	95	170	47.4
Kaufman [4]	31,170	14,969	3,989	26.6	4,782	1,042	465	(1,507)	31.5
Kendall	5,243	3,991	----------	----------	49	8	19	27	55.1
Kenedy	632	307	----------	----------	--------	0	0	0	0
Kent [3]	2,249	1,321	----------	----------	36	6	4	(10)	27.8
Kerr [3]	14,022	8,782	----------	----------	393	68	56	(124)	31.5
Kimble	4,619	2,858	----------	----------	4	1	2	3	75.0
King [3]	870	448	----------	----------	36	7	2	(9)	25.0
Kinney	2,668	1,473	----------	----------	126	56	36	92	73.0
Kleberg	21,991	11,589	----------	----------	521	253	2	255	48.9
Knox	10,082	5,434	----------	----------	312	21	42	63	20.2
Lamar	43,033	22,150	8,285	37.4	4,617	837	363	1,200	26.0
Lamb [3]	20,015	10,575	----------	----------	645	159	44	(203)	31.5
Lampasas [3]	9,929	6,215	----------	----------	146	24	38	(62)	42.5
LaSalle [3]	7,485	3,887	----------	----------	11	2	5	(7)	63.6
Lavaca	22,159	12,803	6,648	51.9	1,291	127	372	499	38.7
Lee [4]	10,144	4,763	2,399	50.4	1,399	326	425	(751)	53.7
Leon [4]	12,024	4,787	1,798	37.6.	2,538	682	636	(1,318)	51.9
Liberty	26,729	12,323	9,098	73.8	3,359	1,166	590	1,756	52.3
Limestone	25,251	11,906	5,229	43.9	3,959	1,327	827	2,154	54.4
Lipscomb	3,658	2,241	----------	----------	2	0	1	1	50.0
Live Oak	9,054	4,807	----------	----------	21	0	2	2	9.5
Llano [3]	5,377	3,541	----------	----------	40	6	7	(13)	32.5
Loving	227	136	----------	----------	1	4	0	4	100.0

See footnotes at end of table.

Unofficial Figures

TABLE 35.—*Texas Registration Statistics*—Continued

County	Population 1950	Whites over 21 1950	Whites registered 1956	Percent whites over 21 registered	Nonwhite population over 21 1950	Nonwhite poll taxes paid and listed exempts	Nonwhite estimated unlisted exempts	Nonwhites over 21 registered 1958	Percent D nonwhites over 21 registered
Lubbock	101,048	55,662	21,605	38.8	4,481	494	48	542	12.1
Lynn	11,030	5,930			330	28	23	51	15.5
Madison	7,996	3,544	1,442	40.7	1,352	224	315	539	39.9
Marion [4]	10,172	2,778	823	29.6	3,086	885	721	(1,606)	52.0
Martin [3]	5,541	2,856			120	32	8	(40)	33.3
Mason	4,945	3,153			37	0	4	4	8.1
Matagorda [4]	21,559	10,017	6,182	61.7	2,787	581	601	(1,182)	42.4
Maverick	12,292	6,762			27	0	4	4	14.8
McCulloch [3]	11,701	7,154			238	44	35	(79)	33.2
McLennan [2]	130,194	70,656	31,700	44.9	13,326	4,000	800	(4,800)	36.0
McMullen	1,187	729			5	0	1	11	20.0
Medina	17,013	9,481			139	12	32	44	31.7
Menard [3]	4,175	2,570			27	3	5	(8)	29.6
Midland	25,785	14,329	10,405	72.6	1,258	750	13	763	60.7
Milam	23,585	11,853	5,086	42.9	2,735	210	715	925	33.8
Mills	5,999	3,954			2	0	1	1	50.0
Mitchell [1]	14,357	8,022			447	200	63	(263)	58.8
Montague	17,070	11,078			4	0	0	0	0
Montgomery	24,504	10,901	5,642	51.8	3,530	1,084	704	1,788	50.7
Moore	13,349	7,443			16	0	1	1	6.3
Morris	9,433	4,047	1,705	42.1	1,529	271	274	545	35.6
Motley	3,963	2,221			130	18	16	34	26.2
Nacogdoches	30,326	13,524	5,961	44.1	4,378	1,070	429	1,499	34.2
Navarro	39,916	19,427	5,468	28.1	5,574	985	550	1,535	27.5
Newton	10,832	3,971	2,181	54.9	1,923	635	436	1,071	55.7
Nolan	19,808	11,741			449	84	6	90	20.0
Nueces	165,471	88,949	40,608	45.7	5,182	1,666	30	1,696	32.7
Ochiltree	6,024	3,618			4	0	0	0	0
Oldham	1,672	924			1	0	0	0	0
Orange [4]	40,567	20,784	13,731	66.1	2,558	632	32	(664)	26.0
Palo Pinto [1]	17,154	11,031			454	100	82	(182)	40.0
Panola	19,250	7,806	3,737	47.9	3,035	891	543	1,434	47.2
Parker [3]	21,528	13,562			185	32	54	(86)	46.5
Parmer [3]	5,787	3,356			11	2	1	(3)	27.3
Pecos	9,939	5,451			87	12	6	18	20.7
Polk [4]	16,194	6,949	2,432	35.0	2,624	648	599	(1,247)	47.5
Potter	73,366	44,735	7,419	16.6	2,408	317	2	319	13.2
Presidio	7,354	3,974			50	1	9	10	20.0
Rains [3]	4,266	2,417			198	51	41	(92)	46.5
Randall	13,774	8,356			45	0	4	4	8.9
Reagan [3]	3,127	1,809			78	17	3	(20)	25.6
Real	2,479	1,432			4	1	0	1	25.0
Red River	21,851	10,285	3,528	34.3	2,787	318	647	965	34.6
Reeves [3]	11,745	6,546			146	33	10	(43)	29.5
Refugio [3]	10,113	5,054			653	134	101	(235)	36.0
Roberts	1,031	649				0	0	0	0
Robertson	19,908	7,288	3,017	41.4	4,371	753	1,147	1,900	43.5
Rockwall [4]	6,156	2,935	2,368	80.7	770	197	116	(313)	40.6
Runnels	16,771	10,050			286	0	60	60	21.0
Rusk	42,348	18,879	9,464	50.1	6,614	2,122	1,258	3,380	51.1

See footnotes at end of table.

Unofficial Figures

TABLE 35.—*Texas Registration Statistics*—Continued

County	Population 1950	Whites over 21 1950	Whites registered 1956	Percent whites over 21 registered	Non-white population over 21 1950	Non-white poll taxes paid and listed exempts	Non-white estimated unlisted exempts	Non-whites over 21 registered 1958	Percent non-whites over 21 registered
Sabine [4]	8,568	3,833	2,819	73.5	1,198	322	185	(507)	42.3
San Augustine	8,837	3,412	1,288	37.7	1,515	236	302	538	35.5
San Jacinto [3]	7,172	2,042	654	32.0	1,981	542	528	(1,070)	54.0
San Patricio	35,842	18,133	----------	----------	406	52	41	93	22.9
San Saba	8,666	5,325	----------	----------	48	10	11	21	43.8
Schleicher [3]	2,852	1,610	----------	----------	39	12	5	(17)	43.6
Scurry [3]	22,779	13,820	----------	----------	197	47	15	(62)	31.5
Shackelford	5,001	3,164	----------	----------	84	8	17	25	29.8
Shelby [2]	23,479	10,971	4,379	39.9	2,963	700	584	(1,284)	43.3
Sherman	22,443	1,474	----------	----------	2	0	0	0	0
Smith [4]	74,701	33,642	12,287	36.5	12,599	2,500	1,276	(3,776)	30.0
Somervell	2,542	1,713	----------	----------	1	0	0	0	0
Starr	13,948	7,175	----------	----------	4	0	1	1	25.0
Stephens	10,957	6,796	----------	----------	244	151	50	201	82.4
Sterling [3]	1,282	777	----------	----------	11	1	0	(1)	9.1
Stonewall [3]	3,679	2,118	----------	----------	59	12	14	(26)	44.1
Sutton	3,746	2,038	----------	----------	17	4	1	5	29.4
Swisher	8,249	4,808	----------	----------	72	4	6	10	13.8
Tarrant	361,253	212,892	131,076	61.6	26,495	5,023	242	5,265	19.9
Taylor [3]	63,370	38,112	11,823	31.2	1,659	307	26	(333)	20.1
Terrell	3,189	1,796	----------	----------	9	1	3	4	44.4
Terry [3]	13,107	7,080	----------	----------	216	46	16	(62)	28.7
Throckmorton	3,618	2,328	----------	----------	1	0	1	1	100.0
Titus	17,302	8,894	----------	----------	1,721	566	305	871	50.6
Tom Green	58,929	35,053	----------	----------	1,891	610	2	612	32.4
Travis	160,980	88,502	47,355	53.5	13,890	4,880	473	5,353	38.5
Trinity	10,040	4,549	1,703	37.4	1,576	1,107	417	1,524	96.7
Tyler	11,292	5,435	----------	----------	1,172	227	205	432	36.9
Upshur [4]	20,822	9,366	4,942	52.8	3,032	919	604	(1,523)	50.2
Upton	5,307	3,004	----------	----------	122	84	11	95	77.9
Uvalde	16,015	8,975	----------	----------	130	10	23	33	25.4
Val Verde	16,635	9,099	----------	----------	202	58	2	60	29.7
Van Zandt [4]	22,593	13,306	----------	----------	811	181	180	(361)	44.5
Victoria	31,241	16,836	6,745	40.1	2,051	466	182	648	31.6
Walker	20,163	8,297	2,109	25.4	4,322	792	885	1,677	38.8
Waller [4]	11,961	3,598	1,225	34.0	3,150	765	626	(1,391)	44.2
Ward	13,346	7,349	----------	----------	213	77	21	98	46.0
Washington [4]	20,542	9,200	6,048	65.7	3,957	846	1,202	(2,048)	51.8
Webb	56,141	30,238	----------	----------	82	4	0	4	4.9
Wharton	36,077	16,248	8,899	54.8	4,337	949	1,008	(1,957)	45.1
Wheeler	10,317	5,937	----------	----------	162	10	25	35	21.6
Wichita	98,493	56,513	20,748	36.7	3,935	994	27	1,021	25.9
Wilbarger	20,552	11,591	----------	----------	1,011	210	22	232	31.9
Willacy	20,920	10,574	----------	----------	80	13	12	(25)	31.3
Williamson	38,853	20,885	6,499	31.1	3,203	56	655	711	22.2
Wilson	14,672	7,998	----------	----------	179	24	60	84	46.9
Winkler	10,064	5,778	----------	----------	120	71	6	77	64.2
Wise	16,141	10,341	----------	----------	83	7	16	23	27.7
Wood	21,308	11,519	----------	----------	1,712	328	399	727	39.5
Yoakum	4,339	2,425	----------	----------	8	17	1	18	100.0

See footnotes at end of table.

Unofficial Figures

TABLE 35.—*Texas Registration Statistics*—Continued

County	Population 1950	Whites over 21 1950	Whites registered 1956	Percent whites over 21 registered	Nonwhite population over 21 1950	Nonwhite poll taxes paid and listed exempts	Nonwhite estimated unlisted exempts	Nonwhites over 21 registered 1958	Percent nonwhites over 21 registered
Young [3]	16,810	10,737	----------	----------	103	17	9	(26)	25.2
Zapata	4,405	2,461	----------	----------	1	0	0	0	0
Zavala	11,201	5,738	----------	----------	59	24	7	31	52.5
Total	7,711,194	4,154,790	1,489,841	*49.0	582,944	172,076	54,419	226,495	38.8

Texas Negro population, 1950, 977,458; total nonwhite population, 984,660. Population figures are from Bureau of Census.

Registration figures for Negroes unless otherwise noted represent paid poll tax counts, poll tax exemption lists and estimated poll tax exemptions by Long News Service, Austin, Texas. Figures are for the year from February 1958 through January 1959. Parentheses around nonwhite registration figures indicate estimates explained by footnotes next to county names.

Registration figures for whites are from a report prepared by Dr. Henry A. Bullock, Chairman, Graduate School of Research, Texas Southern University, for the Southern Regional Council.

Texas has no registration as such. Registration figures shown represent poll taxes paid, poll tax exemption lists for persons over 60 years of age who do not have to pay the poll tax in order to be eligible to vote and estimated poll tax exemptions including persons over 60 who are not listed exempts but are eligible to vote. Exemption certificates are required in cities over 10,000. Estimated exemptions are based on 1950 Census data showing the number of persons over 60 residing in the county.

Population shifts, changes in age, or failure to strike the names of deceased or departed registrants since 1950 account for percentages in some cases in excess of 100 percent "registered." In such cases 100 percent is shown.

*Computed on basis of counties for which white registration figures are available.

[1] Registration figures based on "county tax assessor-collector's estimate."

[2] Registration figures are an "educated estimate by a political source."

[3] Registration figures are a "statistical estimate based on 12 percent of total Negro population in county."

[4] Registration figures are a "statistical estimate based on the percentage [of poll taxes] paid in known adjoining counties."

TABLE 36

Counties With 50 Percent or more Nonwhites in 1950

With latest available estimates of percentage of nonwhites registered

Source: 1950 Census; registration percentage estimates based on same sources explained in preceding State tables.

ARKANSAS

County	Nonwhite percent of total 1950 population	Percentage of 1950 nonwhite over 21 registered in 1958
Chicot	54.6	36.5
Crittenden	66.8	6.9
Lee	59.4	18.0
Lincoln	53.3	27.1
Phillips	59.7	23.7
St. Francis	57.4	17.7
Whole State	22.4	27.6

FLORIDA

Gadsden	56.1	0.6
Jefferson	62.5	13.2
Whole State	21.8	39.5

GEORGIA

Baker	61.0	0
Burke	71.3	4.9
Calhoun	67.5	4.1
Camden	50.7	67.5
Clay	69.7	4.4
Crawford	57.7	8.6
Dooly	53.0	18.7
Early	52.9	4.7
Greene	51.0	77.0
Hancock	72.8	42.4
Harris	56.6	5.9
Jasper	56.5	34.9
Jefferson	57.5	4.7
Jenkins	53.6	23.9
Jones	55.0	27.7
Lee	71.3	1.1
Liberty	61.2	87.6
McIntosh	61.1	59.6
Macon	66.1	3.7
Marion	59.2	2.8
Meriwether	50.9	16.2

GEORGIA—Continued

County	Nonwhite percent of total 1950 population	Percentage of 1950 nonwhite over 21 registered in 1958
Mitchell	50.3	6.3
Monroe	50.9	26.2
Morgan	52.0	22.6
Peach	61.3	16.0
Putnam	55.5	24.8
Quitman	66.3	4.3
Randolph	65.5	10.0
Schley	59.3	13.4
Screven	56.4	6.5
Stewart	72.5	3.1
Sumter	55.0	6.5
Talbot	69.7	8.0
Taliaferro	65.8	48.5
Terrell	67.2	0.95
Twiggs	61.9	13.5
Warren	63.9	6.9
Washington	56.7	26.7
Webster	63.9	0
Wilkes	55.7	7.8
Whole State	30.9	25.8

LOUISIANA

Claiborne	51.7	0.2
Concordia	59.3	6.2
De Soto	56.6	7.2
East Carroll	61.1	0
East Feliciana	58.2	7.2
Madison	66.2	0
Point Coupee	53.7	11.5
Red River	50.0	.5
St. Helena	53.1	52.3
St. James	50.3	58.4
Tensas	64.8	0
West Baton Rouge	53.2	20.9
West Feliciana	71.2	0
Whole State	33.0	27.5

TABLE 36—Continued

Counties With 50 Percent or More Nonwhites in 1950

With latest available estimates of percentage of nonwhites registered

Source: 1950 Census; registration percentage estimates based on same sources explained in preceding State tables.

NORTH CAROLINA

County	Nonwhite percent of total 1950 population	Percentage of 1950 nonwhites over 21 registered in 1958
Bertie	59.8	n.a†
Edgecombe	51.9	6.5
Gates	52.6	6.4
Halifax	56.6	10.7
Hertford	60.0	2.9
Hoke	60.6	2.6
Martin	50.4	13.8
Northampton	64.2	n.a†
Robeson	57.3	29.0
Warren	66.4	11.4
Whole State	26.6	*28.4

*Based on reports from boards of elections in 79 of State's 100 counties.
†Not available.

SOUTH CAROLINA

Allendale	72.3	3.6
Bamberg	57.8	8.8
Burnwell	61.7	11.1
Beaufort	57.5	16.9
Berkeley	63.2	23.5
Calhoun	70.8	1.7
Clarendon	70.9	3.5
Colleton	53.3	10.9
Dorchester	55.2	7.1
Edgefield	59.9	6.3
Fairfield	59.3	12.6
Georgetown	53.1	12.4
Hampton	55.9	5.4
Jasper	65.2	14.9
Lee	66.9	11.9
McCormick	62.6	0
Marion	56.0	11.2
Marlboro	52.7	8.4
Orangeburg	63.2	11.6
Sumter	57.3	21.0
Williamsburg	67.6	22.1
South Carolina State average	38.9	14.9

VIRGINIA

County	Nonwhite percent of total 1950 population	Percentage of 1950 nonwhites over 21 registered in 1958
Brunswick	57.8	14.0
Caroline	51.4	16.3
Charles City	81.0	36.5
Cumberland	55.7	15.0
Dinwiddie	64.6	10.6
Goochland	50.0	26.8
Greenesville	59.3	19.4
Isle of Wight	51.9	23.5
King and Queen	53.8	19.5
Nansemond	65.3	15.0
New Kent	54.0	32.5
Northampton	53.5	10.2
Southampton	60.9	6.6
Surry	63.8	19.7
Sussex	65.6	15.7
Virginia State average	22.2	21.7

Unofficial Figures

ALABAMA

(Unofficial registration figures—see source explanation on preceding Alabama table)

Barbour	53.4	6.3
Bullock	73.6	0.9
Choctaw	52.5	3.7
Dallas	65.0	2.9
Greene	83.0	2.6
Hale	70.3	2.1
Lowndes	82.2	0
Macon	84.4	8.4
Marengo	69.4	1.2
Monroe	51.1	2.7
Perry	67.5	3.9
Russell	52.0	4.9
Sumter	76.1	4.9
Wilcox	79.1	0
Whole State	32.1	14.2

Unofficial Figures

TABLE 36—Continued

Counties With 50 Percent or more Nonwhites in 1950

With latest available estimates of percentage of nonwhites registered

Source: 1950 Census; registration percentage estimates based on same sources explained in preceeding State tables

TEXAS

(Unofficial figures—see source explanation on preceding Texas table)

County	Nonwhite percent of total 1950 population	Percentage of 1950 nonwhites over 21 registered in 1958
Harrison	51.8	(1)
Marion	56.9	
San Jacinto	52.5	
Waller	52.9	
Whole State	12.8	38.5

[1] For *estimates*, not actual counts in these counties, see preceding Texas table.

TENNESSEE

(Unofficial registration figures—based on Commission investigation)

Fayette	70.6	
Haywood	61.9	0
Whole State	16.1	

MISSISSIPPI

(See source explanation on preceding Mississippi table)

Amite	54.2	0.07
Bolivar	68.5	2.3
Carroll	57.0	0

MISSISSIPPI—Continued

(See source explanation on preceding Mississippi table)

County	Nonwhite percent of total 1950 population	Percentage of 1950 nonwhites over 21 registered in 1955
Claiborne	74.8	2.3
Clay	56.9	0.24
Coahoma	72.2	5.6
Copiah	53.4	0.2
De Soto	67.2	0.01
Grenada	52.2	0.78
Holmes	73.5	0.39
Humphreys	69.7	0.48
Issaquena	67.4	0
Jasper	51.4	0.21
Jefferson	74.5	0
Jefferson Davis	55.5	26.5
Kemper	59.4	0.49
Leflore	68.2	1.7
Madison	73.6	3.7
Marshall	70.6	0.18
Noxubee	74.4	0
Panola	55.9	0.01
Quitman	60.7	2.9
Sharkey	71.3	0.02
Sunflower	68.1	0.6
Tallahatchie	63.7	0
Tate	57.6	0
Tunica	81.8	0.29
Warren	50.7	8.9
Washington	66.8	5.7
Wilkinson	69.1	0.87
Yazoo	61.8	0.73
Whole State	45.4	3.89

TABLE 37

First 26 Counties From Which Voting Complaints Have Been Received

State and county	Number of complaints received	Percent nonwhite population	Percent urban	Population, 1950	Voting age white population, 1950	Nonwhite voting age population, 1950	Median school years completed, persons over 25	Median family income	Percent of families with income below $2,000	Percent dwellings with hot running water, toilet, and not dilapidated	Percent dwellings with 1.01 or more persons per room	Percent dwellings occupied by nonwhites
Alabama:												
Barbour	1	53.4	23.9	28,892	8,012	7,158	6.4	963	75.9	17.3	46.0	47.5
Bullock	3	73.6	20.1	16,054	2,633	5,425	5.6	534	81.1	12.1	58.3	68.2
Dallas	19	65.0	40.6	56,270	12,597	18,145	7.0	976	69.4	26.3	56.1	60.7
Macon	44	84.4	22.0	30,561	3,081	14,539	7.0	788	73.7	23.5	35.6	78.1
Montgomery	29	43.6	78.8	138,965	51,869	34,079	9.5	1,927	51.4	51.8	24.2	39.9
Wilcox	2	79.1	0	23,476	3,056	8,218	5.6	655	86.4	10.5	43.4	73.2
State total or average	97	32.1	43.8	3,061,743	1,231,514	516,245	7.9	1,580	58.6	31.6	30.5	29.3
Florida:												
Gadsden	9	56.1	41.1	36,457	11,183	10,930	6.9	1,238	70.8	24.1	27.1	55.5
State total or average	9	21.8	65.5	2,771,305	1,458,716	366,797	9.6	1,950	51.1	60.1	18.0	18.8
Louisiana:												
Bienville	8	49.2	0	19,105	6,123	4,478	7.2	1,272	70.1	17.8	22.6	43.0
Bossier	9	34.7	41.8	40,139	15,768	6,974	8.9	1,744	54.5	44.4	27.8	33.5
Caddo	8	37.6	75.6	176,547	73,073	37,772	9.3	2,157	47.3	53.3	21.3	34.3
Claiborne	7	51.7	31.1	25,063	7,748	6,277	7.6	1,458	60.8	28.8	26.9	44.6
De Soto	11	56.6	18.2	24,398	6,644	6,859	6.3	1,164	71.5	22.9	27.5	50.6
Iberia	6	32.4	52.8	40,059	15,953	6,704	5.9	1,835	53.5	36.4	28.5	30.1
Jackson	2	29.8	20.1	15,434	6,415	2,299	7.9	1,876	52.6	28.7	23.9	27.2
Ouachita	1	33.0	65.4	74,713	31,381	14,532	8.5	2,052	49.0	43.6	23.8	32.3
Red River	9	50.0	0	12,113	3,569	2,917	5.6	1,030	75.6	11.7	30.4	45.9
Webster	25	36.5	36.9	35,704	13,606	6,618	8.1	1,920	51.9	40.8	25.9	30.8
State total or average	84	33.0	54.8	2,683,516	1,105,861	481,284	7.6	1,810	53.9	40.5	26.2	30.8
Mississippi:												
Bolivar	3	68.5	10.7	63,004	11,144	21,805	5.7	641	81.7	15.7	60.6	65.3
Claiborne	5	74.8	24.4	11,944	1,929	4,728	7.1	758	84.4	16.5	32.6	69.3
Forrest	10	28.8	65.4	45,055	19,708	7,406	9.9	1,641	58.3	54.0	18.6	26.3
Jeff. Davis	13	55.5	0	15,500	3,847	3,923	8.2	760	83.1	16.1	32.1	50.7
Leflore	1	68.2	34.9	51,813	10,332	17,893	6.4	918	71.9	26.2	35.3	64.2
Sunflower	3	68.1	7.8	56,031	10,037	18,949	5.7	744	81.8	14.7	39.0	65.9
Tallahatchie	1	63.7	8.6	30,486	6,299	9,235	5.7	607	82.6	11.4	38.1	61.1

See footnotes at end of table.

TABLE 37—Continued

First 26 Counties From Which Voting Complaints Have Been Received—Continued

State and county	Number of complaints received	Percent nonwhite population	Percent urban	Population, 1950	Voting age white population, 1950	Nonwhite voting age population, 1950	Median school years completed, persons over 25	Median family income	Percent of families with income below $2,000	Percent dwellings with hot running water, toilet, and not dilapidated	Percent dwellings with 1.01 or more persons per room	Percent dwellings occupied by nonwhites
State total or average	36	45.4	27.9	2,178,914	707,709	497,384	8.1	1,028	72.4	25.2	32.1	42.3
New York:												
Bronx	3	6.9	100	1,451,277	957,126	64,007	8.9	3,297	25.2	95.1	21.6	5.8
State total or average	3	6.5	85.5	14,830,192	9,718,328	656,118	9.6	3,055	30.5	83.5	12.4	5.4
Tennessee:												
Haywood	1	61.9	18.0	26,212	6,013	7,921	6.9	1,207	73.7	14.7	38.5	55.7
State total or average	1	16.1	44.1	3,291,718	1,659,758	318,790	8.4	1,749	55.6	36.0	25.3	15.5
U.S. total or average	230	10.5	64.0	150,697,361	88,195,191	9,208,116	9.3	3,073	------	63.1	15.7	8.8

Source:

1950—U.S. Census of population.

1950—Census of Housing—General characteristics. For registration statistics on these counties, see preceding tables.

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